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Constitutional Edition

# The Works of
# Alexander Hamilton

Edited by
Henry Cabot Lodge

"The sacred rights of mankind are not to be rummaged for among old parchments or musty records. They are written, as with a sunbeam, in the whole volume of human nature, by the hand of the Divinity itself, and can never be erased or obscured by mortal power."
[HAMILTON—*The Farmer Refuted*, 1775, Æt. 18.]

"We are laboring hard to establish in this country principles more and more *national*, and free from all foreign ingredients, so that we may be neither 'Greeks nor Trojans,' but truly Americans."—[HAMILTON TO KING, 1796, Æt. 39.]

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# FOREIGN RELATIONS (*Continued*)

# FOREIGN RELATIONS (*Continued*)

## CABINET OPINION

AT a meeting held at the State House of the City of Philadelphia, July 8, 1793,

*Present:*

The Secretary of State,
The Secretary of the Treasury,
The Secretary of War.

It appeared that a brigantine called the *Little Sarah* has been fitted out at the port of Philadelphia with fourteen cannon and all other equipments, indicating that she is intended (as a privateer) to cruise under the authority of France, and that she is now lying in the river Delaware at some place between this city and Mud Island; that a conversation has been had between the Secretary of State and the Minister Plenipotentiary of France, in which conversation the minister refused to give any explicit assurance that the brigantine would continue until the arrival of the President and his decision in the case, but made declarations respecting her not being ready to sail within the time of the expected return of the President, from which the Secretary of State

infers, with confidence, that she will not sail till the President will have an opportunity of considering and determining the case; that in the course of the conversation the minister declared that the additional guns which had been taken in by the *Little Sarah* were French property, but the Governor of Pennsylvania has declared that he has good ground to believe that at least two of her cannon were purchased here of citizens of Philadelphia. The Governor of Pennsylvania asks advice what steps, under the circumstances, he shall pursue.

The Secretary of the Treasury and the Secretary of War are of opinion that it is expedient that immediate measures should be taken provisionally for establishing a battery on Mud Island, under cover of a party of militia, with discretion that if the brig *Sarah* should attempt to depart before the pleasure of the President shall be known concerning her, military coercion be employed to arrest and prevent her progress.

The Secretary of State dissents from this opinion.

TH. JEFFERSON.[1]

Information having also been received that part of the crew of the *Sarah* are citizens of the United States, as can be testified by Charles Biddle of this city, the above-mentioned heads of departments agree that this information shall be communicated to the attorney of the district, in order that, pursuant to his former instructions, he may take measures for apprehending and bringing them to trial.

[1] Jefferson rendered a dissenting opinion the same day. The above opinion, in which both Hamilton and Knox agreed, was drawn by the former.

## CABINET OPINION—HAMILTON AND KNOX

July 8, 1793.

*Reasons for the Opinion of the Secretary of the Treasury, and the Secretary at War, respecting the Brigantine "Sarah"* [1]

I.—Because there can be no doubt, either upon principle or authority, that the permitting or suffering, or what is equivalent, the not taking effectual measures to prevent, when known, the fitting out of privateers in our ports by one of the belligerent powers to cruise against any of the others, is an unequivocal breach of neutrality.

II.—Because the President, in conformity with a unanimous opinion of the heads of the departments, and the Attorney-General, founded upon the above principle, has caused his disapprobation of the practice to be signified to the Ministers both of Great Britain and France, accompanied with an express assurance to the former, that *effectual measures would be taken to prevent a repetition of the practice.*

III.—Because consequently not to take such measures in the present instance would be to depart from the declaration of neutrality, and to contravene

[1] Genet had equipped various privateers despite the remonstrances of the government. Finally he undertook to fit out and man a vessel under their very eyes at Philadelphia. This vessel was the *Little Sarah.* Hamilton got information in regard to her. Washington was absent and the Cabinet sent to Governor Mifflin, who ordered out the militia. Jefferson in alarm went to Genet, who raged and lied, and finally Jefferson had the troops withdrawn. Hamilton and Knox then advised erecting a battery on Mud Island and sinking the *Little Sarah* if she tried to pass, and these are their reasons. Jefferson resisted successfully. The *Little Sarah* was allowed to drop down to Chester, and soon after, despite Genet's promises, she went to sea.

the positive assurance given to the Minister of Great Britain; an omission as dishonorable as it must be dangerous to the government, implying either a want of ability, or a want of consistency and good faith. And as it will indubitably furnish a just cause for complaint against the United States, so it is natural to expect that it may involve them in war. It becomes the more serious in consequence of the non-surrender of the prizes which were *brought into our ports by the privateers "Sans Culottes"* and *"Citizen Genet,"* fitted out at Charleston.

IV.—Because the fitting out of this privateer is a transaction involving on the part of the agents of France a gross outrage upon, and undisguised contempt of, the government of the United States. It is aggravated by the circumstances of having been done under the immediate eye of the government, after an explicit and serious communication of its disapprobation—and after an expectation given that no similar attempt would be repeated. The Secretary of State reported to the President as the result of a conversation with the French Minister, on the subject of the two *privateers* before mentioned, what was equivalent to an apology for having done it, and to at least a tacit promise to forbear a repetition. Yet it is still done, and is even attempted to be justified.

V.—Because it is impossible to interpret such conduct into any thing else than a regular plan to force the United States into the war. Its tendency to produce that effect cannot be misunderstood by the agents of France. The direct advantage of the

measure to her is obviously too inconsiderable to induce the persisting in it contrary to the remonstrances of the government, if it were not with a view to the more important end just mentioned; a conduct the more exceptionable, because it is accompanied with the fallacious disavowal of an intention to engage us in the war.

VI.—Because there is every evidence of a regular system in the pursuit of that object, to endeavor to control the government itself by creating, if possible, a schism between it and the people, and enlisting them on the side of France in opposition to their own constitutional authorities. This is deducible not only from a great variety of collateral incidents, but from direct written and verbal declarations of the French Minister.

The memorial lately presented by him to the Secretary of State, the most offensive paper perhaps that was ever offered by a foreign minister to a friendly power with which he resided, announces unequivocally the system which is alleged to exist.

Besides the exorbitant pretensions which that paper advances, of a right in defiance of the declared sense of the government to fit out armed vessels from the ports of the United States, and even to enlist our citizens in their own territories in the service of France; to hold courts within their jurisdiction for the condemnation of prizes unsanctioned by compact, contrary to the rights of neutrality, contrary even to the spirit of the regulations of France for her own consulate establishment, besides the loose and unfounded charges of breach of treaty

rudely urged;—that paper more than insinuates the imputation on the President of ill will to France under the instigation of foreign influence, of having gone beyond his duty and his authority by the decision of matters not within his province, and sufficiently implies an appeal from him to Congress, if not to the people, whose disposition is at least indelicately put in contrast with his. Language of this sort, if even better founded than it is in the present instance, can never be used by a diplomatic character without a culpable violation of decorum. He has nothing to do but with the constitutional organ of the government. In his official communication he ought never to look beyond him—nor can he do it without disrespect to the government and to the nation.

The declaration of the Minister of France to Mr. Dallas, Secretary of the Commonwealth of Pennsylvania, as related by him to the Governor of that Commonwealth and to the Secretary of State, is a further confirmation of the same system. That declaration, among other exceptionable things, expressed, "That he, the French Minister, would appeal from the President to the people."

It would be a fatal blindness not to perceive the spirit which inspires such language, and ill-omened passiveness not to resolve to withstand it with energy.

VII.—Because to refuse an assurance that the privateer should remain in port, till the President could arrive to decide upon her situation, was an additional high-handed contempt of the government;

which was in no shape palliated by the ambiguous intimations of a *probability* that she would not be ready to depart before his return,—intimations which, from experience in other cases, can in no degree be relied upon.

VIII.—Because not to act with decision under such circumstances will be to prostrate the government, to sacrifice the dignity and essential interests of the nation. Indecision in such a case must necessarily tend to destroy at home and abroad a due respect for the government, to weaken its arm, to embolden the enterprises of an intriguing and daring foreign agent, to encourage and multiply those who are disposed to adhere factiously to him, and alternately to put the country in a condition of being dictated to by that foreign agent, and at war with all the enemies of the nation he represents. It is a truth the best founded and of the last importance, that nothing is so dangerous to a government as to be wanting either in self-confidence or self-respect.

IX.—Because decision may even tend to preserve peace with France herself. If the enterprises of her Minister are not checked in their present stage, it may clearly be inferred from his character that they are likely to be carried to a length which will render a rupture between the two countries inevitable, should they not previously produce one with the powers who are opposed to France.

X.—Because the measure which is recommended, is but a consequence of the instruction given to the different governors on the 24th of May last, addressed to them in their military capacity, expressly

to be executed by the agency of the militia, and it included necessarily the use of military coercion when that should be found requisite to the end to be accomplished. It is, therefore, not to adopt a new principle, but to second the execution of an order already given by the President, founded upon mature deliberation and the unanimous opinion of the heads of departments, with the Attorney-General. It is therefore due to the *known* and *declared* pleasure of the President. A Governor who could not have recourse to the advice now asked, would fail in his duty not to employ in a similar case the means recommended, *without further sanction.*

The Governor of Pennsylvania might justifiably do so in the existing instance; but the case having been previously drawn into consultation between him and the heads of departments, he has thought fit to ask their advice, and in giving it, conformably with the true spirit of the President's instruction, *they* would only faithfully execute the trust reposed in them by him.

XI.—Because the measure proposed is only provisional, and can have no other effect than to evince the determination of the government, unless the vessel attempts to depart contrary to the intimation of the Minister, as understood by the Secretary of State. In such an event the necessity will be attested by the occasion.

XII.—If there be delicacy on one side, there is still greater delicacy on the other. France would have justly nothing to complain of in reference to an act which was merely a vindication of our own sover-

eignty in our own territory, against a manifest, deliberate, and outrageous violation of it by her agent.

If she be at all reasonable or equitable, she will disavow the proceedings and the agent, and take no offence. An appeal to her justice and friendship ought for this purpose to follow a resistance to the encroachment. But if actual measures be not taken, the other powers will have just cause of complaint, not only upon principle, but upon the strength of positive assurance. If war is to be hazarded, 't is certainly our duty to hazard it with that power which by injury and insult forces us to choose between opposite hazards, rather than with those powers who do not place us in so disagreeable a dilemma.

A proceeding like that proposed cannot colorably be considered by any nation as an act of hostility. If attempts are made in neutral ports to equip armed vessels without permission of the neutral sovereign, they are clandestine: if they are detected and suppressed, it is regarded, as a matter of course, a penalty of which the adventurers are to take the chance. It would be a disgrace to the sovereign to whom they belong, and an offence to the neutral nation, *even to make it a subject of complaint.*

To adopt as a rule of conduct, that, if we are to be involved in the war, it must be *at any rate* against the powers who are opposed to France, and that we ought rather to give them cause for attacking us, by suffering ourselves to be made an instrument of the hostilities of France, than to risk a quarrel with her by a vigorous opposition to her encroachments,

would be a policy as unjust and profligate as it would be likely to prove pernicious and disgraceful.

A. Hamilton,
H. Knox.

---

WASHINGTON TO JOHN JAY, CHIEF-JUSTICE, AND JAMES WILSON, JAMES IREDELL, AND WILLIAM PATTERSON, ASSOCIATE-JUSTICES, OF THE SUPREME COURT OF THE UNITED STATES

Philadelphia, July 23, 1793.

Gentlemen:

The circumstances, which had induced me to ask your counsel on certain legal questions interesting to the public, exist now as they did then; but I by no means press a decision whereon you wish the advice and participation of your absent brethren. Whenever, therefore, their presence shall enable you to give it with more satisfaction to yourselves, I shall accept it with pleasure.

With sentiments of high respect, I am, etc.

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QUESTIONS PROPOSED TO BE SUBMITTED TO THE JUDGES OF THE SUPREME COURT OF THE UNITED STATES

Draft by Hamilton.

July, 1793.

I.—Do the treaties between the United States and France give to France or her citizens a right, when at war with a Power with whom the United States are at peace, to fit out originally in and from the ports of the United States, vessels armed for war, with or without commissions?

II.—If they give such a *right*, does it extend to all manner of armed vessels, or to particular kinds only? If the latter, to what kinds does it extend?

III.—Do they give to France or her citizens, in the case supposed, a right to refit, or arm anew, vessels which, before their coming within any port of the United States, were armed for war, with or without commissions?

IV.—If they give such a right, does it extend to all manner of armed vessels, or to particular kinds only? If the latter, to what kinds does it extend? Does it include an augmentation of force, or does it only extend to replacing the vessel *in statu quo ?*

V.—Does the 22d Article of the Treaty of Commerce, in the case supposed, extend to vessels armed for war, on account of the government of a Power at war with France, or to merchant armed vessels belonging to the subjects or citizens of that Power, (viz.:) of the description of those which by the English are called letter-of-marque ships—by the French "batiments armés en marchandise et en guerre"?

VI.—Do the treaties aforesaid prohibit the United States from permitting, in the case aforesaid, the armed vessels belonging to a Power at war with France, or to the citizens or subjects of such Power, to come within the ports of the United States, there to remain as long as they may think fit, except in the case of their coming in with prizes made of the subjects or property of France?

VII.—Do they prohibit the United States from permitting, in the case supposed, vessels armed, on account of the government of a Power at war with

France, or vessels armed for merchandise and war, with or without commission, on account of the subjects or citizens of such Power, or any vessels other than those commonly called privateers, to sell freely whatsoever they may bring into the ports of the United States, and freely to purchase in and carry from the ports of the United States, goods, merchandise, and commodities, except as excepted in the last question.

VIII.—Do they oblige the United States to permit France, in the case supposed, to sell in their ports the prizes which she or her citizens may have made of any Power at war with her, or of the citizens or subjects of such Power; or exempt from the payment of the usual duties on ships and merchandise, the prizes so made, in the case of their being to be sold within the ports of the United States?

IX.—Do those treaties, particularly the Consular Convention, authorize France, as of right, to erect courts within the jurisdiction of the United States for the trial and condemnation of prizes made by armed vessels in her service?

X.—Do the laws and usages of nations authorize her, as of right, to erect such courts for such purposes?

XI.—Do the laws of neutrality, considered relatively to the treaties of the United States with foreign Powers, or independently of those treaties, permit the United States, in the case supposed, to allow to France or her citizens the privilege of fitting out originally in and from the ports of the United States, vessels armed and commissioned for war, either on

account of the government or of private persons, or both?

XII.—Do those laws permit the United States to extend the like privilege to a Power at war with France?

XIII.—Do the laws of neutrality, considered as aforesaid, permit the United States, in the case supposed, to allow to France or her citizens the privilege of refitting or arming anew vessels which, before their coming within the United States, were armed and commissioned for war? May such privilege include an augmentation of the force of such vessels?

XIV.—Do those laws permit the United States to extend the like privilege to a Power at war with France?

XV.—Do those laws, in the case supposed, permit merchant vessels of either of the Powers at war, to arm in the ports of the United States, without being commissioned? May this privilege be rightfully refused?

XVI.—Does it make any difference, in point of principle, whether a vessel be armed for war, or the force of an armed vessel be augmented, in the ports of the United States, with means procured in the United States, or with means brought into them by the party who shall so arm or augment the force of such vessel? If the first be unlawful, is the second lawful?

XVII.—Do the laws of neutrality, considered as aforesaid, authorize the United States to permit to France, her subjects, or citizens, the sale within her ports of prizes made of the subjects or property of a Power at war with France, before they have been

carried into some port of France and there condemned, refusing the like privilege to her enemy?

XVIII.—Do those laws authorize the United States to permit to France the erection of courts within their territory and jurisdiction, for the trial and condemnation of prizes—refusing that privilege to a Power at war with France?

XIX.—If any armed vessel of a Power at war with another with whom the United States are at peace, shall make prize of the subjects or property of its enemy within the territory or jurisdiction of the United States, have not the United States a right to cause restitution of such prize? Are they bound or not by the principles of neutrality so to do, if such prize shall be within their power?

XX.—To what distance, by the laws and usages of nations, may the United States exercise the right of prohibiting the hostilities of foreign Powers at war with each other within rivers, bays, and arms of the sea, and upon the sea along the coasts of the United States?

XXI.—Have vessels armed for war, under commission from a foreign Power, a right, without the consent of the United States, to engage within their jurisdiction seamen and soldiers, for the service of such vessels, being citizens of that Power, or of another foreign Power, or citizens of the United States?

XXII.—Is it lawful for the citizens of such Power, or citizens of the United States, so to engage, being within the jurisdiction of the United States? [1]

[1] Hamilton objected to a reference to the judges on the ground that the matter was not within the province of the judiciary. Washington,

## WASHINGTON TO THE HEADS OF DEPARTMENTS AND THE ATTORNEY-GENERAL

Draft by Hamilton.

PHILADELPHIA, July 29, 1793.

GENTLEMEN:

It will not be amiss, I conceive, at the meeting you are about to have to-day, to consider the expediency of directing the custom-house officers to be attentive to the arming or equipping vessels, either for offensive or defensive war, in the several ports to which they belong, and make report thereof to the governor or some other proper officer.

Unless this or some other effectual mode is adopted to check this evil in the first stage of its growth, the Executive of the United States will be incessantly harassed with complaints on this head, and probably when it may be difficult to afford a remedy.

I am, etc.

---

## NO JACOBIN [1]

[From the *Daily Advertiser*.]

### I.

August, 1793.

It is publicly rumored in this city that the minister of the French republic has *threatened to appeal from the President of the United States to the people.*

however, in deference to the wishes of Jefferson, decided to make the reference, and so Hamilton framed the series of questions given above. The judges declined to answer, alleging that these were questions of national policy and international relations which could not properly come before them except in the course of the administration of justice.

[1] Genet, going from bad to worse, finally undertook to appeal to the people against the government. It was at this juncture that Hamilton again took up his pen and addressed the public in the "No Jacobin" papers. The government handled Genet with great dignity and ability,

Various publications which have recently appeared in the papers, particularly that under the signature of "Juba," in the *National Gazette* of the 10th instant, and that under the signature of "A Jacobin," in the *General Advertiser* of Friday last, seem to have begun the appeal.

Several traits in the latter carry conjectures of the writer to the source of the threatened appeal. The idiom of it is evidently foreign, and it abounds in terms and phrases which are said by those who have access to him to be frequently in the mouth of the supposed author. That the idiom is foreign, will appear to a competent judge of the English language, from the structure of every sentence; but there are particular expressions which will prove it even to those who have no very accurate knowledge of it. Witness these extracts: "I cannot be convinced that a plan of this kind *should* be approved by Congress or the people of the United States,"— "through a desire of giving a proof of the *loyalty* and confidence which ought to exist between the agents of free nations." The word "*loyalty*" in the English language is only used to denote fidelity to a prince, to a lover, or to a mistress. In the French it is a *familiar* expression of good faith, candor, sincere dealing, etc.

and when he made his last false step they demanded his recall. The course of the government and the arguments of Hamilton slowly but surely brought public opinion round to the administration, and when the demand for Genet's recall came (August 23, 1793) the administration were masters of the situation. The "No Jacobin" papers appeared in the *Daily Advertiser*, and the first number was reprinted in Fenno's *Gazette of the United States*, August 31, 1793. The succeeding numbers followed at short intervals.

That it probably proceeds from the source of the threatened appeal, is to be inferred from the positive assertion of things which, if true, can only be known to the principal officers of the general government, and to the public agents of France. It is said that orders were given to the military to take possession of a French vessel without *previous complaint, explanation, or communication with the agents of the French republic.* Again, it is said, the minister of France caused the *Grange* [1] to be returned upon a *simple request* of the American government. Declarations like these could only with propriety be made with so much peremptoriness by parties to the transaction.

Indeed, they seem intended to dismiss even the appearance of concealment. Let us now see in what manner the heavy charges of breach of treaty, which are brought against the executive of the general government, are supported.

The first is the *detention of French vessels armed in the ports of the United States;* which is said to be contrary to the 22d Article of the Treaty of Commerce between the United States and France.

The words of the French original upon which this construction is put, are as follows: "Il ne sera permis a aucun corsaire étranger non appartenant a quelque sujet de sa majesté tres chretienne ou a aucun citoyen des dits Etats Unis, lequel aura un commission de la part d'un prince ou d'une puissance en guerre avec l'une des deux nations, d'armer leurs

[1] An English vessel captured by one of Genet's privateers within the capes of the Delaware.

vaissaux dans les ports de l'une des deux parties, ni d'y vendre les prizes qu'il aura faites, etc."

The true translation of these words is: It shall not be permitted to any *foreign privateer not belonging to subjects of His Most Christian Majesty or to citizens of the United States*, which shall have commissions from a prince or power at war with one of the two nations, to arm their vessels in the ports of the one or the other of the two parties, nor there to sell the prizes which they shall have made, etc.

The plain and evident meaning of this translation is, that neither of the contracting parties shall be *at liberty to permit* the privateers of a power at war with the other, to fit or arm in its ports, or sell their prizes there, etc.

But this stipulation not *to permit* the privateers of powers at war with either of the parties, to fit or arm in the ports of the other, can by no rule of construction be turned into an agreement to permit the privateers of one party, when engaged in war with a third power with whom the other party is at peace, to fit or arm in the ports of the party at peace. This would be to convert *a prohibition against doing one thing* into a *contract to do* another.

Nor is there a syllable in the whole sentence that even implies such a contract. The attempt seems to be to deduce it from the words "*not belonging to subjects of His Most Christian Majesty or to citizens of the United States*," as if these words were introduced by way of exception to the generality of the terms "foreign privateers, ' to imply that the privateers of the subjects or citizens of the parties might

be permitted to fit or arm in the ports of each other.

But these words "*not belonging,*" etc., must be taken merely as words of additional description, more clearly to express what is intended by the terms "*foreign privateers.*" Nor are they useless to this end. The sense of the terms "foreign privateers," is not sufficiently precise or clear without them, for the privateers of either party would be *foreign* with respect to the other, but the intention being to designate privateers *foreign* to both parties. To render this intention unequivocal, the words "not belonging to the subjects of His Most Christian Majesty, or to the citizens of the United States," are added, which fixes the true meaning. It is equivalent to having said, it shall not be permitted to foreign privateers, *that is to say*, privateers "not belonging," etc. Unless, too, these words are understood in this manner, they make nonsense of the whole clause. To perceive this, it is only necessary to remark, that the foreign privateers intended to be prohibited from the privilege of arming, etc., are expressly those *which have commissions from a power at war with one of the parties.*

Then, if the words "not belonging," etc., are to be used as words of exception, the natural reading of the clause would be as follows. "It shall not be permitted to *foreign privateers* which have commissions from a prince or state at war with one of the two nations, to fit or arm in the ports of the other, *unless* those privateers so commissioned belong to the subjects or citizens of the one or the other of the contracting parties."

This exception would then operate to produce one of these two effects, both equally absurd. Either to authorize one of the contracting parties to permit privateers belonging to their own citizens, under commission from a power at war with the other, to fit or arm in its ports; thus allowing its subjects or citizens with impunity, and even countenance, to partake in the war against the other of the contracting parties; or to authorize one of the parties to permit privateers belonging to the subjects or citizens of the other, under commission from a power at war with such other party, to fit or arm in the ports of the first-mentioned party; thus enabling one party to give aid and countenance to the subjects of the other, when carrying on war against their own nation or sovereign, and consequently in the situation of rebels or pirates.

No sense more rational can be given to the words in question, when understood as words of exception, having regard to the due and natural connection and import of the terms which immediately precede and succeed. It follows that they cannot be understood as words of exception, but merely as words of description, and that the inference attempted to be drawn from them is forced and unwarrantable. Indeed, neither as words of exception, nor as words of description, do they give the least color to that inference.

If the printed copies of the treaty are accurate, the punctuation is a further illustration that the words "not belonging," etc., are merely words of additional description. In the French original, they are not

divided even by a comma from the words "corsaire étranger"—"foreign privateer,"—which they immediately follow, forming with them the first member of the sentence and connected with the next member of it by the pronoun "lequel," or "which": il ne sera permis a aucun corsaire étranger non appartenant a quelque sujet de sa majesté tres chretienne ou a un citoyen des dits Etats Unis, lequel etc.

The words in question cannot, without making the clause nonsense, be understood as words of exception in another view. The words "*foreign privateers*," are naturally to be understood as privateers foreign to both parties. If the words "not belonging," etc., are not taken as words of additional description, but of exception—that is to say, if they are to be understood as equivalent to saying "*except* privateers belonging to the subjects of and commissioned by one of the parties," it leads to a contradiction of terms; it would be equivalent to saying, "it shall not be permitted to foreign privateers, not *foreign*," etc., for privateers belonging to the subjects of and commissioned by one of the parties, would not be foreign to both the parties.

But if it were possible, consistently with the context, to give the words "non appartenant," or "not belonging," the effect of an exception favoring the construction which is contended for, it could not at any rate go further than to authorize vessels previously fitted out and commissioned in the ports of France, and coming into our ports in the capacity of privateers, there to fit or arm; it could not possibly extend to the original fitting out, arming, and

commissioning of privateers by one party in the ports of another; the expressions of every part of the clause presuppose that the vessels intended are already privateers, having commissions, etc., when they come into the ports of the respective parties.

And it is well known that the detention complained of applies entirely to vessels which have been made privateers in our own port.

If any confirmation were requisite, in so plain a case, of the construction which appears to have been adopted by the Executive of the general government, it might be found in the regulations of France herself at the time our treaty with her was made. Those regulations show that it was the policy of France to restrict to her own ports the fitting out of privateers, with a variety of precautions to secure their good behavior, their accountability, and the rights and interests of all concerned; from which it is to be inferred that the clause in question was not intended to establish a right on either side to fit out privateers in the ports of the other, such a right being incompatible with the then existing policy of France.

Indeed, such a right would be incompatible with the preservation of peace by either party, when the other was engaged at war, for as it would make one auxiliary to the other in this vexatious and irritating mode of hostility to an indefinite extent, it would be stronger than the case of a definite succor stipulated on a defensive alliance, and could not fail to involve the party permitting it in the war.

It is not presumable that a mere incidental regulation in a treaty of commerce could have been in-

tended to include a consequence so important; and it could only have been admitted upon the strength of terms explicit and unequivocal.

All advantages relating to war, which are stipulated in favor of one nation, so as to be incommunicable to another, include more or less of hazard. They are apt to produce irritations, which produce war. In every case of doubt, therefore, upon the construction of treaties, the rule is against the concession of such advantages. The principles of interpretation favor no thing that tends to put the peace of a nation in jeopardy. It is incumbent on a power at war, claiming of a neutral nation, on the ground of treaty, particular privileges of a military nature, to rest his pretensions upon clear and definite, not upon doubtful or obscure, expressions. When founded upon expressions of the latter kind, this claim is always to be rejected.

Hence, consequently, the pretension to fit or arm in our ports privateers antecedently commissioned in the ports of France, beyond the mere point of reparation, is inadmissible. It is not necessary to admit it for the sake of finding a useful object for the clause in question. That clause will have a very natural and a very useful application, when it is understood as merely a prohibition to prevent a power at war with the other to fit or arm privateers in the ports of the party at peace. For without it each party would have been at liberty to grant by treaty such a right to other powers, which is now prevented.

An argument against every construction of this kind, may be drawn from the seventeenth article of

the treaty of commerce. This article grants affirmatively to the armed vessels of each party, certain privileges in the ports of the other. 'T is there we should naturally look for a privilege so important as the one claimed; not in an article, the general object of which plainly is to exclude other powers from privileges in the ports of the contracting parties. The omission of the privilege claimed in the clause where it would naturally be included, is a reason against admitting it upon a forced construction of a clause where it would not naturally be expected.

Upon the whole, there is no plausible ground for the pretension set up. The natural construction of the clause of the treaty which has been quoted, obviously excludes it, and the United States cannot, *ex gratiâ*, accede to it without departing from neutrality, and encountering the mischiefs of a war with which they have nothing to do.

The result is, that a pretension to fit out privateers in our ports against our will, is an insult to our understandings, and a glaring infraction of our rights.

The residue of the Jacobin's charges will be hereafter examined.

No Jacobin.

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II

1793.

The next charge of breach of treaty exhibited by the Jacobin against the Executive of the United States is, to use his own language, "the seizure of prizes made known to the agents of the French republic at the moment those prizes were held up for

sale." The orders given to the military to take possession of a French vessel, without previous complaint, explanation, or communication with the agents of the French republic, said to be contraventions of the 17th Article of the Treaty of Commerce, by which it is provided "that it shall be lawful for the ships of war and privateers of either party, freely to carry whithersoever they please, the ships and goods taken from their enemies, without being obliged to pay any duty to the officers of the admiralty or any other judges, and without those prizes entering into the ports of the one party or the other, being liable to be arrested or seized, nor can the officers of the places take cognizance of the validity of the said prizes, which may go out and be conducted freely and in all liberty to the places expressed in their commissions, which the commanders of the said vessels shall be obliged to show," etc.

It is presumed, that the facts complained of are more particularly applicable to the case of the ship *William*, arrested in this port; though it is understood that the same proceedings, with some small difference of circumstances, took place in the case of another vessel in New York.

To judge of the propriety of the complaint in each case, it is necessary to attend to the following particulars. According to the general laws and usage of nations, the jurisdiction of every country extends a certain distance into the sea along the whole extent of its coast. What this distance is remains a matter of some uncertainty, though it is an agreed principle that it at least extends to the utmost range of cannon

shot, that is, not less than four miles. But most nations claim and exercise jurisdiction to a greater extent. Three leagues, or nine miles, seem to accord with the most approved rule, and would appear from Martin, a French author, to be that adopted by France, though Valin, another French author, states it at only two leagues, or six miles.

Within this distance of the coast of a neutral country, all captures made by a power at war upon its enemy are illegal and null, on the principle of its being a violation of the jurisdiction and protection of the neutral country. This principle, founded on the most evident reason, is asserted by all writers, and practised upon by all nations.

Every nation has a right to prevent a violation of its jurisdiction, and consequently to prevent the making of captures within that jurisdiction. A right to redress if such captures be made is a necessary consequence. A neutral nation is bound to prevent injuries within its jurisdiction to a power with which it is at peace, by any other power. In other words, it owes fair guard and protection to the citizens and subjects of every power with which it is at peace. It is therefore bound to exert itself to prevent captures within the limits of its protection of the subjects or property of one power by another power, and if such capture happens to avail itself of its own right of redress, against the power making it, for the purpose of effecting a restitution of the person or thing captured.

This is too plain to be denied; but it is pretended that the redress of the injury is to be sought through

the channel of negotiation only, and not by the immediate exertion of the authority of the neutral nation, to cause restitution to be made in the first instance, either by means of courts of justice, or by the use of the public force.

It may boldly be affirmed that this position is founded neither on principle nor the opinion of writers, nor on the practice of nations; not on principle, because it is unreasonable to suppose that a nation ought to postpone the opportunity of redressing itself and of doing justice to another, upon the uncertain issue of a negotiation of which it cannot foresee the success. When the object is out of its reach, the way of negotiation ought to be pursued; for the alternative then is to negotiate or go to war, and a due moderation requires that a preference should be given to the milder course; but if the object to which the injury relates is within its power, the most prudent as well as the most dignified and efficacious course is to embrace the opportunity of rectifying what has been done amiss, for this seems to terminate the affair, and avoid the controversies and heats too often incident to negotiation.

The position in question is not founded on the opinion of writers, for these establish a contrary doctrine—as may be seen in Bynkershoek's *Quæstiones Publici Juris*, Book I., Chap. 8; Vatel, Book II., Sec. 84, 101, 102, and 289; 2 R. Inst., 587–589; Leoline Jenkins's *Life and Papers*, vol. 1, xcv.; vol. 2, pages 727, 733, 751, 752, 754, 755, 780; Woodeson's *Lectures*, page 443; Douglass' *Rep.*, 595; Lee on *Captures*, Cap. 9,—nor on the practice of nations, for

this is in favor of summary prevention and redress, as may be seen by one example which those writers quote, and is within experience of individuals among ourselves. A neutral fortress never scruples to fire upon the vessels of any power which attempts to commit a hostility against another power within reach of its cannon, nor a neutral sovereign or magistrate to prevent or restore captures made within his jurisdiction.[1]

The foregoing observations will lead to a right judgment of the merits of the complaint which is made.

Each of the vessels in question is understood to have been taken within a distance short of the least of the two distances which has been mentioned as forming the rule observed by France, one of them seems less than three miles, the other within less than five miles.

It may, therefore, be affirmed that both these captures were made within the limits of the protection of the United States, and in violation of their jurisdiction. And it will follow, from the principles which have been maintained, that the United States

[1] Indeed our treaties with several powers oblige us to this conduct. In the 5th article of that with Holland, the 2d of that with Sweden, the 7th of that with Prussia, the United States in affirmance of the general doctrine of the laws of nations "bind themselves by all means in their power to endeavor to protect all vessels and other effects belonging to the subjects and inhabitants of those powers respectively, in their ports, roads, havens, internal seas, passes, rivers, and as far as their jurisdiction extends at sea, and to recover and cause to be restored to the true proprietors, all such vessels and effects which shall be taken under their [protection] jurisdiction," which is a plain indication that our then negotiators and government never dreamt of the newly invented construction of that treaty.

have a right and are bound to cause restitution of those prizes.

To this conclusion is opposed that provision of the article which declares that the local officers cannot take cognizance of the validity of the prizes which are carried by one party into the harbors or ports of the other.

But there is no established rule of interpretation with regard either to laws or treaties than that general expressions shall never be so understood as to involve unreasonableness or absurdity. According to this rule the general expression "the local officers" (les officiers des lieux) "cannot take cognizance of the validity of the prizes," must naturally be understood with reference to prizes made on the high seas without the jurisdiction of the party into whose harbors or ports they are brought, not with reference to prizes taken within the protection and jurisdiction of such party. The following qualification is from the nature of things implied in the general terms, to wit: provided the prizes have not been taken within the jurisdiction of the party in whose ports they shall be. An interpretation so extensive as to embrace prizes made within the jurisdiction of such party would lead to a consequence not less absurd than this. A vessel of the United States might be taken by a French privateer in the port of Philadelphia, and there would be no power to question the validity of the prize or enforce restitution. Such a consequence is too violent to be admissible, and a position which includes it refutes itself. It can never be imagined that any nation could mean to tie up her hands to such an extent.

If, then, prizes of vessels belonging to the United States or their citizens shall be excepted, it will follow that the clause cannot in this respect be taken in a literal sense; and if it is to be taken in a rational, not a literal, sense, it will admit the exceptions of all prizes taken within the jurisdiction or protection of the party within whose territories they are found, being at peace with the nation of whom or of whose citizens it is made, for a state owes protection not only to its own citizens but to the citizens of every other nation with which it is at peace, coming within its jurisdiction for commerce or any other lawful cause. Nor can it even be supposed, upon the strength of mere general expressions, that it has meant to exchange the right of affording protection and security by its own power and authority, for that of negotiating with another nation the reparation which may be due to a violation of its jurisdiction. So essential an alienation of jurisdiction could only be deduced from precise and specific as well as express terms.

Besides, such an inference is broader even than the letter of the clause. 'T is only to the "officiers des lieux," the local officers, or officers of the harbors, ports, or places to which the prizes are brought, that the cognizance of their validity is forbidden; 't is not to the general judiciary tribunals or general executive authority of the country that such cognizance is denied. The expressions, "officiers des lieux," are not of a nature to comprehend them. They are, therefore, under no prohibition by the treaty, and consequently, as far as consists with the

jus gentium, or law of nations, are at liberty to interpose.

And the rule of the law of nations is this, that a neutral nation shall not interpose to examine the validity of prizes made by a power at war, from its enemies, at any place except one which is within the jurisdiction of such neutral nation. It is of the essence of jurisdiction to redress all wrongs which happen within its sphere. Powers at war have no right in derogation from the peculiar jurisdiction of a neutral nation. That jurisdiction, therefore, is in the same force against them as against powers at peace. What would be a marine trespass in the one case, is so in the other. A capture within the protection or jurisdiction of a neutral state is not a lawful act of war, but a mere trespass, of course within the competency of the neutral state to redress it.[1]

It may be asked why, if this was the rule of the law of nations, there should have been a particular article of treaty concerning it? The answer is, 1st. That it is a common practice to introduce into treaties stipulations recognizing the rules of the law of nations, in order to avoid controversy about them, of which there are several examples in our treaties. 2d. That the article secures to France something

[1] The rights of war only take place in the countries of the powers at war, or on the high seas which are common to both. If acts of hostility are committed within a neutral territory, they do not partake of the rights of war, they cannot be judged of by the laws of war, nor have any of the rules of war the smallest relation to them. As trespasses they are liable to be redressed in the ordinary course of justice, as infringements of territorial rights they claim redress and punishment from the executive authority of the injured country.

more than the usage of several nations admits, namely, a right to continue in our ports an indefinite time, and the benefit of an exclusion of the privateers of her enemies, having made prizes of the subjects, people, or property of France, from the degree of asylum to which they would otherwise be entitled. These are sufficient objects for the article without giving to it an extension subversive of the just and necessary jurisdiction of the country.

It is clearly demonstrated by what has been said that the government of the United States has an undoubted right to interpose authority, not by mere negotiation, to effect the restoration of the ships in question to their original owners, and that the doing so, either by a direct exertion of the public force, or by means of judicial process, is consistent both with the laws of nations, and with the true meaning of our treaty with France. It therefore gives no handle to the complaint of breach of treaty. To what department of the government it most regularly belongs to effect the requisite redress—whether to the Executive or to the Judiciary, or to both indiscriminately, is not yet settled in this country, nor is it material to any foreign nation. It is a mere question between the departments of our own government. So long as nothing is done which is contrary to the laws of nations or to treaty, a foreign power can have no ground of complaint.

As to the point of previous application to the agents of the foreign nation concerned, this belongs to a mere question of civility, not of right; there being in every such case a direct responsibility on the

part of the neutral nation to the power whose citizens or property may have been captured. The power making the capture cannot justly be dissatisfied if the surest method of performing its duty is adopted by the neutral nation. This is to take the prize in the first instance into custody, till a fair and full examination can be had into the fact with regard to the place of capture, as was done in the instances in question.

This course, too, would naturally obtain till some arrangement should have been concerted between the government and the agents of the powers at war, and is the only one which can be observed in places where there are no such agents. And it would seem, from what took place in the case of the *William*, immediately after her seizure, that such an arrangement had been subsequently agreed upon; which is a proof that the course pursued was not the effect of unkindly disposition. But if there had been a disposition to proceed with strictness and rigor, it will be shown in the sequel that it was fully warranted by the very disrespectful treatment we have experienced from the agents of France, who have acted towards us from the beginning more like a dependent colony than an independent nation,—a state of degradation, to which I trust that the freedom of the American mind will never deign to submit.

No Jacobin.

III

1793.

Another accusation against the Executive of the United States preferred by the Jacobin, is derived from this circumstance: that while by the treaty between the United States and France the goods of her enemies on board our ships are exempt from capture, the goods of France on board our ships are subject to the depredations of her enemies, without any steps being taken by the Executive to cause French property to be returned, and to prevent similar hardships being in future imposed.

This has, if possible, still less color than any of the others.

By the general law of nations as laid down by writers, and practised upon by nations, previous to the late war between the United States and Great Britain, this rule was clearly and fully established.

That the goods of an enemy in the ships of a friend (that is, of a neutral power) are lawful prizes, and that the goods of a friend in the ships of an enemy (those called contraband excepted) are not lawful prizes. This rule is founded upon the principle that one enemy may lawfully take the goods of another wheresoever he finds them, except within the jurisdiction or dominion of a neutral state. Of course he may take them upon the high seas, where no nation can have jurisdiction or dominion. Vatel, Book III., S. 115, 116; Bynkershoek, *Quæs. Jur. Pub.*, Lib. I., Cap. 13, 14.

It necessarily follows that French property taken by the enemies of France in American vessels is by

the law of nations lawful prize, and that American property (not of the contraband kind) taken by Frenchmen in the ships of their enemies is not according to the same law lawful prize. To the forming a right judgment, then, on this part of the Jacobin's charges, and to determine whether France is not benefited rather than injured by the alterations which have taken place, the following observations may perhaps be useful.

During the war between the United States and Great Britain, certain powers who associated under the denomination of the armed neutrality, asserted a rule the reverse of that which had before prevailed and which has been stated. But this association, made with a view to the then existing war, terminated with it. The United States never acceded to that association. They contented themselves with introducing its principle into their treaties with such powers with whom they formed treaties. Accordingly, it is to be found in our treaties with France, Holland, Sweden, and Prussia.

Great Britain, on her part, has never acceded to the new principle as a general rule; and there are other powers of Europe who did not originally unite in the attempt to introduce it, and who are not known to have since done any act amounting to an adoption of it.

An established rule of the law of nations can only be altered by agreements between all the civilized powers, or a new usage generally adopted and sanctioned by time.

Neither having happened in the present case, the

old principle must be considered as still forming the basis of the general law of nations, liable only to the exceptions resulting from particular treaties.

With France, Holland, Sweden, and Prussia, four of the belligerent parties, we have treaties containing the new principle; but with Russia, England, Spain, Portugal, Austria, Savoy, we have no such treaties. Against the former powers, therefore, we have a right to claim the new principle, as they would against us, were we in a state of war and they at peace. Between us and the latter powers the old rule must govern until a departure from it can be regulated by mutual consent.

As we cannot of right assert the new principle against those powers with whom we have not established it by treaty, so neither can we even in prudence or good policy insist upon it, unless we are prepared to support it by arms.

There is not a doubt that all the powers who are at liberty to pursue the old rule will do it. In a war of opinion and passion like the present, concessions to ill-founded or doubtful pretensions are not to be expected. Nor are the United States in a condition to attempt to enforce such claims.

But it seems that the not having hitherto manifested a disposition toward this species of knight-errantry, is an injury and offence to France. The Jacobin deems it a breach of our treaty with her, that we do not quarrel with other nations for an object which we can claim of them neither by the law of nations nor by treaty.

It appears that the Jacobin is ready enough to

insist upon and even to enlarge constructively all the peculiar advantages which our treaty with France gives to her; but any circumstance of supposed inconvenience to her is, in his eyes, a sore grievance, while he seems insensible to those which operate against us. This very reasonable gentleman ought to remember that if the property of the enemies of France in our ships is protected by our treaty with her, the property of our citizens in the ships of these enemies loses by that treaty the immunity or security to which it would otherwise be entitled, and that this important sacrifice on our part was agreed to, that we might have the advantage of being the carriers during European wars.

His silence on this head can only be accounted for on the supposition that if he really belongs to this country, he is blinded to her interests by foreign influence. He ought to remember that the citizens of France have already enjoyed the sweets of this departure by treaty from the law of nations at the expense of our citizens. This happened in the case of the brig *Little Sarah*, on board of which was a quantity of flour belonging to citizens of Philadelphia. This flour was considered and treated as a lawful prize.

He ought also to remember that it is at best problematical whether the citizens of the United States have not more property afloat in the bottoms of the powers at war with France than the citizens of France have afloat in bottoms of the United States, and consequently whether the balance is not in favor of France.

What is there in our history that can authorize our being degraded with the supposition that we are ignorant both of our duties and our rights?

The result of what has been shown evidently is that the Jacobin's charge has no better foundation than that the Executive of the United States has not quarrelled with the enemies of France, for doing what by the law of nations they have a right to do.

No Jacobin.

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IV

1793.

I have, I believe, sufficiently answered charges which the Jacobin has brought against the Executive of the United States.

In doing this, it has been shown that the claim of a right on the part of France to fit out privateers in the ports of the United States, as derived from treaty, is without foundation. As this is the basis on which it has been rested, and indeed it is the only one upon which it could rest if at all to be supported, it is not necessary, by way of answer to the Jacobin, to discuss how the claim of such a right would stand independent of treaty. But a few remarks on this point, for the information of those who may not be familiar with subjects of the kind, may not be without use.

It is a plain dictate of reason and an established principle of the law of nations that a neutral state in any matter relating to war (not specially promised by some treaty made prior to the commencement of the war and without reference to it) cannot lawfully

succor, aid, countenance, or support either of the parties at war with each other; cannot make itself, or suffer itself to be made, with its own consent, permission, or connivance, an instrument of the hostility of one party against the other, and as a consequence of these general principles cannot allow one party to prepare within its territories the means of annoying the other, or to carry on from thence against the other, with means prepared there, military expeditions of any sort by land or water.

To allow such practices is manifestly to associate with one party against the other. The state which does it, ceases thereby to be a neutral state, becomes an enemy, and may be justly treated as such. In common life it is readily understood that whoever knowingly assists my enemy to injure me becomes himself, by doing so, my enemy also; and the reason being the same, the case cannot be different between nations.

Could it be necessary to enforce principles so clearly founded on common sense by authorities and precedents, it might be done by an appeal to writers and to the general practice of nations. The following are a few of these that might be adduced: Vatel, Book III., Sec. 104; Bynkershoek, *Quæs. Jur. Pub.*, Lib. I. Cap. 4, particularly pages 69–70 of Latin edition; *Idem*, Cap. 8, particularly page 65 of the same edition; Leoline Jenkins, 2d vol., 728, 756; Valin, Lib. III., Tit. IX., Art. XIV., p. 272.

Some of these establish only the general principles, others of them go directly to the point of carrying on military expeditions from the territories of the

neutral state, and even to that of fitting out privateers in the ports of such state; pronouncing the neutral state to be answerable for the consequences, and giving the party injured a right to reparation. This reparation may either be in damages, to be paid by the neutral state, or by reprisals, at the option of the party injured.

It appears from them, moreover, that on the ground of the laws of neutrality, some nations (if it be not a general usage) go so far as to exclude from remaining in their ports more than twenty-four hours (if not detained by tempest), armed vessels of one belligerent party coming within its ports with prizes made of another. It was an article of the marine ordinances of France under the former government (and it is not known to have been changed), that "no vessel taken by a captain having a foreign commission, can remain more than twenty-four hours in the ports or harbors of France, if not detained there by tempest, or if the prize has not been made of the enemies of France."

And Valin, advocate and procurator for the king at the seat of the admiralty of Rochelle, has this comment upon that article: "Plenary asylum is due only to those with whom we are not at war. To enemies we owe no more than the safety of their lives; to others we owe hospitality and good treatment, with liberty to go away when they judge proper.

"Nevertheless, as neutrality with two powers at war permits not to succor one to the prejudice of the other, to conciliate this consideration with the right

of asylum, nations have tacitly agreed, and usage has made it a common law, that asylum shall be granted to foreign armed vessels with their prizes; that is to say, if entered into a port through tempest, as long as the bad weather shall not permit them to put to sea, and for four-and-twenty hours only, if they shall have put in from any other cause.

"Thus, except the case of tempest, vessels being in a condition to make sail, there is an obligation to make them depart and return to sea after twenty-four hours, whatever danger there may be of recapture by their enemies; otherwise it would be to violate the laws of neutrality."

(See the authorities before referred to.)

The same idea which is to be found in this author appears in the writings of Leoline Jenkins, also above referred to, who was judge of the High Court of Admiralty of England, in the reign of James II. This serves to show the extreme nicety of nations on the point of neutrality. But how much stronger the case of fitting out armed vessels in a neutral port to make prizes, than that of simply coming into and staying in it with prizes that have been made!

Another reflection occurs in relation to this point, which is this: that the government of the United States, in a matter at least of doubtful propriety, has given to France a doubtful privilege to which she was not entitled by treaty, that of selling the prizes made by her armed vessels in their ports; the treaty stipulated nothing more than a free access and egress. Let it be judged from this how far a disposition to deny France the privileges which she may claim by

treaty has governed. It is true, and in that the United States must seek their justification with other powers, that writers are not agreed as to this rule with regard to prizes; some considering it as lawful to sell them in neutral ports, as may be seen, Vatel, Book III., Cap. 7, Sec. 232. But still it appears that the government, in a doubtful case, has followed the course which favors France. And it is questionable whether the examples of national regulations, and the opinion of a judge and a lawyer versed in the practice of courts of admiralty and more drawn to attend critically to the point of usage, ought not to have more weight than those of writers who were in a situation to have been guided more by general theory. It appears likewise that the Regent of Sweden, who, like us, has pursued the path of neutrality in the present war, has made the point of fitting out privateers a particular article of prohibition; an example in practice which has great weight in the question. The governments of Europe know by long experience the usages of war, and without consulting the authorities or precedents, are able to pronounce with facility on what is lawful, what unlawful.

The example, then, of Sweden, is a respectable confirmation of what is the usage of nations on the point in question.

It is easy too to discern that the United States would become one of the most mischievous enemies which the maritime powers opposed to France could have, if from their territories armed vessels could be fitted out to an indefinite extent, with the full use of

the means to cruise against the trade of those powers; if the prizes made by such armed vessels could be brought into their ports and sold; and if their professed neutrality could give asylum and security to these vessels and the fruits of their depredations. The inference is, that such a state of things could not possibly be long tolerated by those powers, but would lead inevitably to involving the United States in the war.

A consequence, no doubt, well understood, and unquestionably intended by the agents of France, who, with delusive professions of not desiring to embark this country in the war, are industriously employing every expedient that can tend to produce the event.

No Jacobin.

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V

August 16, 1793.

The observations hitherto made have been designed to vindicate the Executive of the United States from the aspersions cast upon it by the Jacobin. Let us now examine what has been the conduct of the agents of France.

Mr. Genet, charged with the commission of Minister Plenipotentiary from the French Republic to the United States, arrived first at Charleston, South Carolina. Instead of coming immediately on to the seat of government, as in propriety he ought to have done, he continued at that place and on the road so long as to excite no small degree of observation and surprise. Here, at once, the system of electrifying

the people (to use a favorite phrase of the agents of France) began to be put in execution. Discerning men saw, from this first opening of the scene, what was to be the progress of the drama. They perceived that negotiation with the constitutional organs of the nation was not the only means to be relied upon for carrying the points with which the representative of France was charged—that popular intrigue was at least to second, if not to enforce, the efforts of negotiation.

During the stay of Mr. Genet at Charleston, without a possibility of sounding or knowing the disposition of our government on the point, he causes to be fitted out two privateers, under French colors, and commissions to cruise from our ports against the enemies of France. Citizens of the United States are engaged to serve on board these privateers, contrary to the natural duties of humanity between nations at peace, and contrary to the positive stipulations of our treaties with some of the powers at war with France. One of these privateers makes a prize of an English vessel, brings her into the port of Charleston, where a Consul of France proceeds to try, condemn, and sell her; unwarranted by usage, by treaty, by precedent, by permission. It is impossible for a conduct less friendly or less respectful than this to have been observed. To direct violations of our sovereignty, amounting to a serious aggression, was added a dangerous commitment of our peace, without even the ceremony of previously feeling the pulse of our government. The incidents that attended Mr. Genet's arrival here, previous

to his reception, though justly subject to criticism, shall be passed over in silence. Breaches of decorum lose their importance when mingled with injuries and outrages.

This offensive commencement of his career was not made an objection to his reception; though it would probably have been so in any other country in the world. It has not been alleged either, that there was any want of cordiality in that reception. We shall see what return was made for this manifestation of moderation and friendship. Knowing, as we do, the opposition of the government to the practice of fitting out privateers in our ports, it cannot be doubted that an early opportunity was taken to make known its disapprobation to the French Minister; nor is it possible that the Executive of the United States can have neglected to remonstrate against so improper an exercise of consular jurisdiction as that which has been mentioned; yet we have seen that the practice of fitting out privateers has been openly persisted in. Their number has so increased, and their depredations have been so multiplied, as to give just cause of alarm for the consequences to the peace of this country. It is also matter of notoriety that the consuls of France have gone on with the condemnation of prizes; that one of them has had the audacity, by a formal protest to the District Court of New York, not only to deny its jurisdiction, but to arrogate to himself a complete and exclusive jurisdiction over the case.

The aggravating circumstances which attended the fitting out the *Little Democrat* at this port, under the

very nose of the government; the means which were used to obtain a suspension of her progress until the return of the President to the seat of government; the refusal which those overtures met with; the intemperate and menacing declarations which they produced on the part of the French Minister—have been the subject of general conversation.

How much more there is in the case; what further contempt of the government may have succeeded the return of the President, can only be matter of conjecture. We know, however, that the *Little Democrat* proceeded to sea, and we conclude, from the known consistency of our Chief Magistrate, that this could not have been with his consent.

Prosecutions have been instituted and carried on, against some of our citizens for entering into the service of France. It is known that Mr. Genet has publicly espoused and patronized the practice, even, as it is asserted without contradiction, to the feeing of counsel for carrying on the defence of the guilty; and we see, but a few days since, an advertisement from the consul of France at Philadelphia, inviting to enter into her service, not only her own citizens, but all friends to liberty, including of course the citizens of the United States.

We read of cases in which one nation has raised men for military service in the dominions of another, with the consent of the nation in whose territories they were raised; but the raising of men, not only without the consent but against the will of the government of the country in which they are raised, is a novelty reserved for the present day, to display the

height of arrogance on one side and the depth of humiliation on the other. This is but a part of the picture.[1]

No Jacobin.

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## INSTRUCTIONS TO THE COLLECTORS OF THE CUSTOMS[2]

Philadelphia, August 4, 1793.

Sir:—It appearing that repeated contraventions of our neutrality have taken place in the ports of the United States, without having been discovered in time for prevention or remedy, I have it in command from the President, to address to the collectors of the respective districts a particular instruction on the subject.

It is expected that the officers of the customs in each district will, in the course of their official functions, have a vigilant eye upon whatever may be passing within the ports, creeks, inlets, and waters of such district, of a nature to contravene the laws of neutrality, and upon discovery of any thing of the kind, will give immediate notice to the Governor of the State, and to the attorney of the judicial district, comprehending the district of the customs within which any such contravention may happen.

To assist the judgment of the officers on this head, I transmit herewith a schedule of rules, concerning sundry particulars which have been adopted by the President, as deductions from the laws of neutrality,

[1] Hamilton being ill with the yellow fever, these essays were not continued.—J. C. H.

[2] These instructions were called forth by the antics of Genet, the continual seizure of British ships by his privateers, and the illegal acts of the French consuls sitting as prize courts.

established and received among nations. Whatever shall be contrary to these rules will, of course, be to be notified as above mentioned.

There are some other points which, pursuant to our treaties, and the determination of the Executive, I ought to notice to you.

If any vessel of either of the powers at war with France should *bring* or *send* within your district a prize, made of the subjects, people, or property of France, it is immediately to be notified to the Governor of the State, in order that measures may be taken, pursuant to the 17th article of our treaty with France, to oblige such vessel and her prize, or such prize, when sent in without the capturing vessel, to depart.

No privateer of any of the powers at war with France, coming within a district of the United States, can, by the 22d article of our treaty with France, enjoy any other privilege than that of *purchasing such victuals as shall be necessary for her going to the next port of the prince or state from which she has her commission.* It she should do any thing beside this, it is immediately to be reported to the Governor and the attorney of the district. You will observe by the rules transmitted, that the term privateer is understood not to extend to vessels armed for merchandise and war, commonly called with us *letters of marque*, nor, of course, to vessels of war in the immediate service of the government of either of the powers at war.

No armed vessel which has been or shall be *originally fitted out* in any port of the United States by

either of the parties at war, is henceforth to have asylum in any district of the United States. If any such armed vessel shall appear within your district, she is immediately to be notified to the Governor and attorney of the district, which is also to be done in respect to any prize that such armed vessel shall bring or send in. At foot is a list of such armed vessels of the above description, as have hitherto come to the knowledge of the Executive.

The purchasing within and exporting from the United States, *by way of merchandise*, articles commonly called contraband, being generally warlike instruments and military stores, is free to all the parties at war, and is not to be interfered with. If our own citizens undertake to carry them to any of those parties, they will be abandoned to the penalties which the laws of war authorize. You will be particularly careful to observe and to notify, as directed in other instances, the case of any citizen of the United States who shall be found in the service of either of the parties at war.

In case any vessel shall be found in the act of contravening any of the rules or principles which are the ground of this instruction, she is to be refused a clearance until she shall have complied with what the Governor shall have decided in reference to her. Care, however, is to be taken in this, not unnecessarily or unreasonably to embarrass trade or to vex any of the parties concerned.

In order that contraventions may be the better ascertained, it is desired that the officer who shall first go on board any vessel arriving within your

district, shall make an accurate survey of her then condition as to *military equipment*, to be forthwith reported to you; and that, prior to her clearance, a like survey be made, that any transgression of the rules laid down may be ascertained.

But as the propriety of any such inspection of a *vessel of war in the immediate service of the government* of a foreign nation, is not without question in reference to the usage of nations, no attempt is to be made to inspect any such vessel, till further order on the point.

The President desires me to signify to you his most particular expectation, that the instructions contained in this letter will be executed with the greatest vigilance, care, activity, and impartiality. Omissions will tend to expose the government to injurious imputations and suspicions, and proportionably to commit the good faith and peace of the country—objects of too much importance not to engage every proper exertion of your zeal.

With consideration, I am, Sir, etc.,

Alexander Hamilton.

[1] 1. The original arming and equipping of vessels in the ports of the United States, by any of the belligerent parties, for military service, offensive or defensive, is deemed unlawful.

2. Equipments of merchant vessels, by either of the belligerent parties, in the ports of the United States, purely for the accommodation of them as such, are deemed lawful.

[1] These are the rules referred to in the circular letter.

3. Equipments in the ports of the United States, of vessels of war in the immediate service of the government of any of the belligerent parties, which, if done to other vessels, would be of a doubtful nature, as being applicable either to commerce or war, are deemed lawful, except those which shall have made prize of the subjects, people, or property of France, coming with their prizes into the ports of the United States, pursuant to the 17th article of our treaty of amity and commerce with France.

4. Equipments in the ports of the United States, by any of the parties at war with France, of vessels fitted for merchandise and war, whether with or without commissions, which are doubtful in their nature, as being applicable either to commerce or war, are deemed lawful, except those which shall have made prize, etc.

5. Equipments of any of the vessels of France, in the ports of the United States, which are doubtful in their nature, as being applicable to commerce or war, are deemed lawful.

6. Equipments of every kind, in the ports of the United States, of privateers of the powers at war with France, are deemed unlawful.

7. Equipments of vessels in the ports of the United States, which are of a nature solely adapted to war, are deemed unlawful, except those stranded or wrecked, as mentioned in the 18th article of our treaty with France, the 16th of our treaty with the United Netherlands, the 9th of our treaty with Prussia, and, except those mentioned in the 19th article of our treaty with France, the 17th of our

treaty with the United Netherlands, the 18th of our treaty with Prussia.

8. Vessels of either of the parties, not armed, or armed previous to their coming into the ports of the United States, which shall not have infringed any of the foregoing rules, may lawfully engage or enlist therein their own subjects or citizens, not being inhabitants of the United States; except privateers of the powers at war with France, and except those vessels which shall have made prize, etc.

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### CABINET OPINION.—HAMILTON TO WASHINGTON[1]

PHILADELPHIA, August 5, 1793.

I doubt the expediency of specially convening the Congress at this time, for the following reasons:

The Constitution requires that an extraordinary occasion should exist as the basis of the exercise of the power of the President to convene the Legislature.

It is not perceived that any circumstance now exists which did not exist months ago, of sufficient force to constitute an extraordinary occasion.

The war in Europe existed then, as it does now. Indian affairs are not understood to be at this time in a worse, if in so bad a posture as they have been for a considerable time past.

[1] This matter of calling Congress together was in reality purely political, and was of course discussed by the Cabinet as if it had nothing to do with politics. The foreign policy of Washington and Hamilton had prevailed. Public opinion was coming over to them, and Jefferson saw no way to revive the flagging French excitement except by getting Congress together, and thus stirring up a general debate and disturbance,—an ingenious plan resisted by Hamilton.

Some additional incidents have indeed fallen out —the decision with regard to Mr. Genet's recall, the verdict of the jury in the case of Henfield, the supposed decree of the National Convention affecting our treaty of commerce with France.

But, with regard to the first, it would be only a reason for the measure as far as the circumstance may be supposed likely to produce a war with France. According to ordinary calculations, such a consequence ought not to be looked for; and the prudence is very questionable of manifesting by any public act that the Executive did look for it.

The second is a matter which, under the circumstances, seems not of sufficient weight. The judges who tried the case were united in their opinion of the law. The jury are universally believed in this city to have been selected for the purpose of acquittal, so as to take off much the force of the example, and to afford no evidence that other juries would pursue the same course.

The supposed decree of the National Convention is an important consideration; but its authenticity is not yet out of question, and it could hardly be acted upon till that was ascertained. And, indeed, it will deserve examination, whether the Executive would not itself be competent to whatever it would be prudent to do in the case.

The objections to the measure at this time are, that unless there are reasons of sufficient force now for adopting it, which did not exist before, the taking the step now would impeach the omitting of it hitherto, and would expose the Executive to much criticism

and animadversion; that the meeting of Congress could scarcely be accelerated for more than a month, allowing, as ought to be done, due time for the knowledge of the call to diffuse itself throughout the United States, for the members to prepare for coming, and for the distant ones to perform the journey. Sufficient time ought to be given for a full house. A month is so short a period as not to form a material object, and as consequently to bring into greater question the propriety of acting upon grounds not much if any thing stronger than existed when a call would have produced a considerable acceleration. In proportion to the shortness of the period gained would be the public anxiety and alarm at the measure. It would be construed into an indication that something very extraordinary and urgent had occurred, and abroad as well as at home much speculation would be excited. This consideration, which was always a weighty objection to anticipating the meeting of Congress by a special call, has now a great additional force for the reason just assigned.

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NOTES BY HAMILTON, TO FRAME LETTER OF SECRETARY OF STATE TO GOUVERNEUR MORRIS, MINISTER AT PARIS

(Cabinet Paper.)

1793.

I.—Explanation of fitting out privateers in Charleston, put on footing of there being no law.

II.—Letter persisting in objection to it.

III.—Reclaims Gideon Henfield.

IV.—Very moderate answer, that courts will do right.

V.—Concerning sloop *Republican.*

1. Issuing commissions a mere consular act.
2. Insists on right of arming for defence.
3. Speaks of treaty permitting to enter.
4. Armed to equip themselves.
5. France always in practice of issuing commissions.
6. Will give orders to consuls to take precautions to respect our territory—political opinions of President.
7. Insists on right of arming vessels—abandonment unworthy its friends.

In waiting until representatives of sovereign had resolved to adopt or reject.

VI.—Complaint of proceedings of District Court against the *William*—persons labor secretly to have misunderstood.

VII.—Letter concerning debt—accomplish *internal system*—since the federal government *without consulting Congress.*

VIII.—Awkwardness—Governor avails himself of political opinions.

IX.—Letter—opinions, private and public, of President—on s'est empressé je ne scais sous quelle influence, des impressions étrangères—complains of obstruction to consular jurisdiction.

X.—Letter concerning sloop *William* requiring relinquishment.

XI.—Letter concerning another vessel in same situation.

XII.—Letter concerning *Little Democrat*—letter on account of the *state* to augment the marine of France —commission, etc.

I.—Blamed in a conversation the judicial proceedings of the consul—ought only to have made a ministerial inquiry.

1. Case of the *Swallow*.[1]

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CABINET OPINION

(Draft by Hamilton.)

August 31, 1793.

At a meeting of the Heads of Departments and Attorney-General, at the President's, on the 31st day of Aug., 1793, a letter from Mr. Gore to Mr. Lear, dated Boston, Aug. 24th, was read, stating that the *Roland*, a privateer fitted out at Boston, and furnished with a commission under the government of France, had sent a prize into that port, which, being arrested by the marshal of the district by process from a court of justice, was rescued from his possession by Mr. Du Plaine, Consul of France, with an armed force from one of the ships of his nation. It is the opinion, that the attorney of the district be instructed to institute such prosecution as the laws will authorize against the said Du Plaine, and to furnish to the Government of the United States authentic evidence of the facts before mentioned, thereon; if it shall appear that the rescue was made by the said Du Plaine, or his order,

[1] The *Swallow* and other vessels here mentioned were Genet's privateers or their prizes.

it is the opinion that his Exequatur should be revoked; also, that the attorney of the district be desired to furnish copies of his applications or other correspondence with the Governor of Massachusetts relative to the several privateers and prizes which have been the subject of his letters to Mr. Lear.

A letter from Mr. Maury, Consul of the United States at Liverpool, dated July 4, 1793, was read, covering an authenticated copy of certain additional instructions from the Court of St. James to the commanders of their ships of war, dated June 8, 1793, permitting them to stop the vessels of neutral nations laden with corn, flour, or meal, and bound to any port of France, and to send them into British ports; from thence they are not to be permitted to proceed to the port of any country not in amity with Great Britain. Thereupon, it is the opinion that Mr. Pinckney be provisionally instructed to make representations to the British Ministry on the said instruction as contrary to the rights of neutral nations, and to urge a revocation of the same, and full indemnification to any individuals, citizens of these States, who may in the meantime suffer loss in consequence of the said instruction. Also, that explanations be desired by Mr. Pinckney of the reasons of the distinction made in the 2d article of the said instructions between the vessels of Denmark and Sweden and those of the United States attempting to enter blockaded ports.

Information having been also received through the public papers of a decree, passed by the National Assembly of France, revoking the principle of free

ships making free goods, and enemy ships making enemy goods, and making it lawful to seize neutral vessels bound with provisions to any other country, and carry them into the ports of France, there to be landed and paid for; and also of another decree excepting the vessels of the United States, from the operation of the preceding decrees, it is the opinion that Mr. Morris be provisionally instructed, in case the first mentioned decrees have passed and not the exceptions, to make representations thereon to the French Government, as contrary to the treaty existing between the two countries, and the decree relative to provisions, contrary also to the law of nations; and to require a revocation thereof and full indemnification to any citizens of these States who may, in the meantime, have suffered loss therefrom, and also in case the said decrees and the exceptions were both passed, that then a like indemnification be made for losses intervening between the dates of the said decrees and exceptions.

A letter from the Governor of Georgia, of the 13th instant, covering the proceedings of a Council of War, relatively to an expedition against certain towns of the Creek Nation, was communicated for consideration.

It is the opinion that the Governor of Georgia be informed that the President disapproves the measure as unauthorized by law, as contrary to the present state of affairs and to the instructions heretofore given, and expects that it will not be proceeded in; that, requiring the previous consideration of Congress, it will be submitted to them at their ensuing

session, if circumstances shall not then render it unnecessary or improper; that the Governor of South Carolina be also informed that the co-operation desired of him by the Governor of Georgia is not to be afforded; and that the agent for procuring supplies of provisions for the service of the United States in Georgia, be instructed that no provisions are to be furnished on their account for the purpose of the said expedition.

THOMAS JEFFERSON,
ALEXANDER HAMILTON,
H. KNOX,
EDM. RANDOLPH.

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### HAMILTON TO WASHINGTON

November 23, 1793.

The Secretary of the Treasury presents his respects to the President. He regrets extremely that the state of his health does not permit him to attend the President to-day. He has the honor to inclose a report on two of the letters to Mr. Genet, and would have embraced the third, respecting the protested bills, if it had been in his power. But no inconvenience can in this case ensue, as the supposed mistake with regard to the funds already promised has been adjusted, and the inclosed report embraces and answers the question of advance upon a future fund. The report would have been more full and precise, if my situation had permitted; but my frame is so disordered as almost to unfit me for business.

HAMILTON TO WASHINGTON

(Cabinet Paper.)

TREASURY DEPARTMENT, November 23, 1793.

The Secretary of the Treasury, upon two letters from the Minister Plenipotentiary of France to the Secretary of State, severally bearing date the 11th and 14th of November inst., respectfully reports to the President of the United States as follows:

The object of these letters is, to procure an engagement that the bills which the minister may draw upon the sums which, according to the terms of the contracts respecting the French debt, would fall due in the years 1794 and 1795, shall be accepted on the part of the United States, payable at the periods stipulated for the payment of those sums respectively.

The following considerations are submitted, as militating against the proposed arrangement:

1. According to the view entertained at the Treasury of the situation of the account between France and the United States, adjusting equitably the question of depreciation, there have already been anticipated payments to France, equal or nearly equal to the sums falling due in the course of the year 1794.

2. The provision by law for discharging the principal of the French debt, contemplates only loans. Of those which have been hitherto made, the sum unexpended is not more than commensurate with a payment which is to be made on the 1st of June next, upon account of the capital of the Dutch debt. It is possible that a fund for this payment may be

derived from another loan; but it is known to the President that, from advices recently received, full reliance cannot be placed on this resource, owing to the influence of the present state of European affairs upon the measures of the United States for borrowing. It need not be observed, that a failure in making the payment referred to would be ruinous to the credit of the United States.

The acceptance of the bills of the Minister of France would virtually pledge the only fund of which there is, at present, a certainty for accomplishing that payment; and as this is a matter of strict obligation directly affecting the public credit, it would not appear advisable to engage that fund for a different object, which, if the ideas of the Treasury are right with regard to the state of our account with France, does not stand upon a similar footing.

It would be manifestly unsafe to presume upon contingencies, or to enter into engagements to be executed at distant periods, when the means of execution are uncertain.

But, as there appears to be a difference of opinion between the Minister of France and the Treasury, with regard to the state of the account between the two countries, it is necessary that something on this head should be ascertained. With this view, the Secretary of the Treasury will proceed, without delay, to make arrangements for the adjustment of the account.

ALEXANDER HAMILTON,
*Secretary of the Treasury.*

### HAMILTON TO WASHINGTON

(Cabinet Paper.)

TREASURY DEPARTMENT, January 4, 1794.

The Secretary of the Treasury, to whom was referred, by the President of the United States, a letter from the Minister of the French Republic to the Secretary of State, dated the 21st of December last, respectfully makes the following

*Report.*

The Minister observes, that it results from the report of the Secretary of the Treasury that upon an accidental error the interests of the French Republic and the character of its representative were compromised by a refusal to accept drafts delivered to the agents by whom they were supplied, for sums due to the republic; adding to this observation the further one, that it seems to him that a like measure merited the most serious attention, and that he knows not by what name to call the negligence which was committed in this respect.

This asperity of remark might, it would seem, have been prevented by a due attention to circumstances and facts. It was stated in the report to which the Minister refers, that the error in question was the mere mistake of the clerk charged with registering his drafts as they were presented at the Treasury. It will not be alleged that this was not the proper business of a clerk; and all that could be expected from the Head of the Department, or the officer having in his place the principal direction, is, that there should have been due care in selecting the

person to whose immediate agency the duty was intrusted. To this point there was no want of attention. The clerk selected had been long tried in public business, and has a well-established reputation for fidelity and accuracy. This officer is himself persuaded that in the instance which occasioned the demur no error was committed, and firmly believes that the convenience of parties had produced an alteration in the bill after it was noted by him; but this surmise of his has been rejected, and it has been taken for granted and admitted that there was a mistake on his part, though, as no mark was set upon any bill presented and noted, that admission was founded on considerations in which candor and delicacy governed. No palliation of the mistake will be attempted to be drawn from topics connected with any derangement of the course of business resulting from the late calamitous condition of the city of Philadelphia, nor from the absence of the Secretary of the Treasury from the seat of government, for the recovery of his health, when the incident deemed so exceptionable took place.

The hesitation about the registering of the bills which appeared to have been overdrawn, was a mere consequence of the first mistake.

The main object of the registry of the bills was to ascertain, for the satisfaction of holders, that there were funds in the Treasury subject to the payment of them; and to secure to those holders a priority, *in the event of there being an overdrawing.* It was, therefore, a matter of course that the registry should cease as soon as itself showed that the amount of the

bills presented equalled the amount of the fund destined for satisfying them. Being the proper and regular guide to the officers of the Treasury, they could not but be expected to follow it.

All that could be asked (if a mistake happened) was, that the consequences of it should be corrected as soon as the mistake was discovered; and this was in fact done. Nor did more than a week elapse before the drafts, which had been suspended on account of the mistake, were recognized and admitted.

But it is suggested by the Minister, that though the error was rectified, the injury which it occasioned has not been cured. That event, it is asserted, has furnished to the ill-disposed, and to the enemies of the French Republic, a powerful means of hurting its cause, by alarming the merchants and ruining the credit of its agents. If this assertion were better founded than it is, it would only afford room to regret the consequence of an involuntary error. But, whatever injury the credit of France in this country, or of her agents, may have sustained, it is to be traced to other sources; more adequate causes can be assigned for it. The assertion which has been made calls for a specification of those causes.

The first of them was, the disappointment of our citizens in not receiving payment of bills to a large amount, furnished to them by the administration of St. Domingo, with assurances of being paid here by the agents of France; at the same time that it was known that these agents had obtained from the Government of the United States funds adequate to such payment, which had been applied to other objects.

In mentioning this circumstance, it is only intended to note the fact and its effects, not to question the propriety of the application which was made of the funds.

Another and a far more powerful cause was, the refusal of the present Minister to pay certain bills, which had had the positive sanction of his predecessor; diverting from that destination funds which were understood to have been appropriated to it—and this, too, in contravention of his own arrangement with the Treasury.

These bills had, like those first mentioned, been drawn by the administration of St. Domingo. But they had in addition been virtually accepted by the late Consul of France, in concert with its then Minister, and in conformity with an understanding between the latter and this government.

The arrival of the present Minister devolved upon him the disposal of the unfurnished residue of the fund which had been promised to his predecessor. An early opportunity was taken to intimate to him the reliance of the government, that the bills accepted as above and unpaid, would be satisfied by him out of that residue. He gave, without hesitation, a correspondent assurance, and on the third of June last addressed to the Secretary of the Treasury, a letter in the following terms, viz.: "I pray you to put hereafter in the disposition of Citizen Bournonville, Secretary of Legation of the Republic, the funds destined to the acquittal of the drafts of the colony of St. Domingo, according to the order of payment settled between you and my predecessor."

A part of these funds was accordingly put into the hands of Mr. Bournonville, in expectation that they would be applied as had been agreed. And upon the inquiries of some of the holders of the bills at the Treasury, in whom apprehensions had been excited, they were assured that they need not entertain any, as it was the known intention of the present Minister to fulfil the engagements of his predecessor; and that funds had been furnished to him for taking up the bills which were falling due.

The Minister afterwards deemed it necessary to change the destination of these funds, as he announced in his letter of the 18th of June to the Secretary of State, and in fact refused payment of the bills.

This measure, of a nature destructive to credit, had the effect which was to have been anticipated.

The very expedient of registering at the Treasury the drafts of the Minister, was rendered necessary by a pre-existing bad state of credit. It engaged the Treasury to nothing more than to secure to those who presented bills a preference against others to whom subsequent drafts might be given, overrunning the fund for payment; and was devised to facilitate to the Minister an auxiliary means of credit of which he stood in need.

These unquestionable truths demonstrate that there is no room to impute to the consequences of the mistake which was committed, any deficiency of credit which may have embarrassed the operations of the Minister.

But it is a further truth, that if his credit has

suffered by the refusal of the Treasury to admit his drafts, it is chiefly to be referred to the draft for 20,000 dollars predicated upon the fund to be at the disposal of France in January, which was *finally* refused, because not authorized by any previous arrangement between the government and the Minister.

The temporary demur about other bills speedily abandoned and explained, could not have had an influence bearing any proportion to that of the ultimate refusal of the above-mentioned bill.

As far as this refusal may have had a prejudicial operation, it is imputable wholly to the irregularity of having drawn the bill, not only without the consent of the government, but even contrary to an intimation from it; in a case, too, in which it was free to refuse.

That it was with the consent of the government, will not be pretended. The letter from the Secretary of the Treasury to the Minister, of the 24th of July, accompanying his former report on the subject, excludes all plea of constructive or implied consent.

That it was contrary to an intimation from the government, results from the following facts:

The Minister, by a letter of the 14th June to the Secretary of State, communicates the intention of giving to those who should furnish him with supplies, "delegations" or assignments of the debt to France in payment; desiring as a prerequisite to this operation, that the Treasury should be instructed to come to a speedy adjustment with him,

of the account of the debt from the United States to France.

To this suggestion the Secretary of State, by a letter of the 19th of June (after assuring him that instructions would be given for the settlement of the account), replied as follows: "In the meantime, what is further to be done will doubtless be the subject of further reflection and inquiry with you, and particularly the operation proposed in your letter will be viewed under all its aspects. Among these we think it will present itself as a measure too questionable both in principle and practicability, too deeply interesting to the credit of the United States, and too unpromising in its result to France to be found eligible to yourself. *Finally, we rest secure that what is of mutual concern will not be done but with mutual concert.*"

Without mutual concert, without even an intervening consultation for that purpose, the Minister thought proper to issue his "delegations" or drafts upon a fund not embraced by any previous arrangement; and he now makes it matter of complaint that these "delegations" were not registered. Was it to have been expected that the Treasury should become the passive instrument of a measure so irregular—so unwarrantable?

But the Minister, in justification of the step, makes two observations:

1. That as the 300,000 livres due the 1st of January are the interest of the loan of 600,000 made by France to the United States in 1783, *the reimbursements of which are not to commence till* 1797, he can see no

motive that could arrest the payment of the interest of that sum at the epoch stipulated, as long as there was due to France an equivalent.

2. That supposing the payments, which have been made by the Treasury, to exceed the amount of the sums due, he has always been firmly convinced that these advances (to which the urgent wants of France had forced a recourse) would be applied to the extinction of the debt taken in totality; a measure perfectly agreeing with the clause inserted in the different contracts which expresses that the United States might, if they judged proper, liberate themselves sooner than the epoch fixed by those contracts.

These observations admit of obvious answers. It is affirmed on our part, and the Minister seems himself to be sensible of its truth, that our payments hitherto exceeded the sums demandable by the terms of our contracts. It may be taken for granted, that this is the case beyond the amount of the interest of the 600,000 accruing in January. The United States are at liberty to consider the excess as an anticipation of the capital of the loans; but they are not bound to do so. They have an option to do that, or to set it off against the interest accruing on the unpaid residue of the debt. The universal course of business will justify them in the latter, and their contracts say nothing to the contrary. Not having declared a different option, they were free to pursue that alternative, and consequently, as has been said, to refuse the drafts of the Minister, predicated upon the January interest.

The circumstance which he notices, of the *reimbursements of the* 600,000 *loan not commencing till* 1797, cannot affect this conclusion. These reimbursements so postponed, relate to the *capital* of the debt; and that postponement of course cannot bring into question the propriety of setting off against the *interest* annually payable, sums advanced beyond those which were antecedently due.

The conviction of the Minister, that the advances which might have been made would be deferred toward the final extinction of the debt, could be no rule to the Treasury, as long as it had not been authorized by any assurance from the government, or when it was recollected, that the propriety of a mutual previous concert, about whatever was not a matter of course, was indicated to him, not only by the reason of the thing, but by unequivocal declarations.

In fact, whether the course on which he declares himself to have relied, could have been pursued or not, depended on circumstances; that is, on the means which should exist of making intermediate payments, and postponing the advances to an ulterior arrangement; a point at this moment unascertained, from causes which have heretofore been disclosed.

But the Minister not only hazarded his credit, by drawing, without a previous arrangement, the bill for 20,000 dollars, payable out of the January interest; he hazarded it likewise by *actually* overdrawing the funds placed at his disposal in September and November last; so that if no mistake had occurred at

the Treasury, he might have been exposed by his own conduct to consequences which, in that respect, happened by accident.

The Secretary now proceeds to the demands contained in the memorial of the Minister. These are:

1. That the state of the account of the United States with France be presented with the least possible delay.

2. That the sums, which may have been advanced to France, beyond those which were demandable on the terms of the contracts, be applied to the extinction of the debt taken in totality.

3. That, provisionally, and until the state of the account can be determined, the Secretary of the Treasury be authorized to register the "delegations" or drafts which the minister shall have occasion to issue, to the extent of five millions turnois.

With regard to the first point, the account is now in a course of adjustment between the Comptroller, on the part of the Treasury, and Mr. Bournonville on the part of the Minister. There are some points which require a mutual adjustment before they can be fixed definitively. A correct view of the account cannot be presented till these points are settled. This done, it shall be immediately laid before the President.

With regard to the second point, the Secretary is of opinion that a determination concerning it cannot now be made. The adoption of the Minister's proposition would amount to an agreement to pay the accruing instalments at the periods stipulated in the contracts, though the advances which have been

made should exceed them. But such an agreement cannot safely be entered into, because it is now problematical whether the Executive will be possessed in time of funds which can be applied to that purpose, without neglecting objects of positive obligation and essential to our credit, as has been already explained and communicated.

With regard to the third point, the answer to the second is an answer to this also. If rightly understood, this proposition depends upon the second. It appears necessary, first, to ascertain what is to be paid, and when it is to be paid, before any sanction can safely be given to the proposed "delegations" or drafts. This presupposes a settlement of accounts, and a further view of our pecuniary prospects.

All of which is humbly submitted.

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## AMERICANUS

(From the *American Daily Advertiser*.)

### I

February 1, 1794.

*The two following papers were prepared some time since, but from particular circumstances have been postponed. The fresh appearances of a covert design to embark the United States in the war, induce their publication at this time.*[1]

An examination into the question how far *regard to the cause of Liberty* ought to induce the United

[1] These papers were published at the moment when Madison's resolutions, founded on Jefferson's commercial report, were before the House, and when every effort was making to draw the lines between a French and an English party, such as the opposition strove to construct. Americanus appeared originally in the *Daily Advertiser*. The date is that of their reprint by Fenno in the *Gazette of the United States*.

States to take part with France in the present war, is rendered necessary by the efforts which are making to establish an opinion that it ought to have that effect. In order to a right judgment on the point, it is requisite to consider the question under two aspects.

I.—Whether the cause of France be truly the cause of Liberty, pursued with justice and humanity, and in a manner likely to crown it with honorable success.

II.—Whether the degree of service we could render, by participating in the conflict, was likely to compensate, by its utility to the cause, the evils which would probably flow from it to ourselves.

If either of these questions can be answered in the negative, it will result that the consideration which has been stated ought not to embark us in the war.

A discussion of the first point will not be entered upon. It would involve an examination too complicated for the compass of these papers; and, after all, the subject gives so great scope to opinion, to imagination, to feeling, that little could be expected from argument. The great leading facts are before the public; and by this time most men have drawn their conclusions so firmly, that the issue alone can adjust their differences of opinion. There was a time when all men in this country entertained the same favorable view of the French Revolution. At the present time, they all still unite in the wish that the troubles of France may terminate in the establishment of a free and good government; and dispassionate, well-informed men must equally unite in the

doubt whether this be likely to take place under the auspices of those who now govern the affairs of that country. But, agreeing in these two points, there is a great and serious diversity of opinion as to the real merits and probable issue of the French Revolution.

None can deny that the cause of France has been stained by excesses and extravagances, for which it is not easy, if possible, to find a parallel in the history of human affairs, and from which reason and humanity recoil. Yet many find apologies and extenuations with which they satisfy themselves; they still see in the cause of France the cause of liberty; they are still sanguine in the hope that it will be crowned with success; that the French nation will establish for themselves not only a free but a republican government, capable of promoting solidly their happiness. Others, on the contrary, discern no adequate apology for the horrid and disgusting scenes which have been, and continue to be, acted. They conceive that the excesses which have been committed, transcend greatly the measure of those which, with every due allowance for circumstances, were reasonably to have been expected. They perceive in them proofs of atrocious depravity in the most influential leaders of the revolution. They observe that among these, a MARAT [1] and a ROBESPIERRE, assassins still reeking with the blood of their fellow-citizens, monsters who outdo the fabled enormities of a *Busiris* and a *Procrustes*, are predominant

[1] This man has lately met a fate which, though the essential interests of society will not permit us to approve, loses its odium in the contemplation of the character.

in influence as well as iniquity. They find everywhere marks of an unexampled dissolution of all the social and moral ties. They see nowhere any thing but principles and opinions so wild, so extreme, passions so turbulent, so tempestuous, as almost to forbid the hope of agreement in any rational or well-organized system of government. They conclude that a state of things like this is calculated to extend disgust and disaffection throughout the nation, to nourish more and more a spirit of insurrection and mutiny, facilitating the progress of the invading armies, and exciting in the bowels of France commotions, of which it is impossible to compute the mischief, the duration, or the end; that if by the energy of the national character, and the intrinsic difficulty of the enterprise, the enemies of France shall be compelled to leave her to herself, this era may only prove the commencement of greater misfortunes; that after wading through seas of blood, in a furious and sanguinary civil war, France may find herself at length the slave of some victorious Sylla, or Marius, or Cæsar: and they draw this afflicting inference from the whole view of the subject, that there is more reason to fear that the CAUSE OF TRUE LIBERTY has received a deep wound in the mismanagements of it, by those who, unfortunately for the French nation, have for a considerable time past maintained an ascendant in its affairs, than to regard the revolution of France in the form it has lately worn, as entitled to the honors due to that sacred and all-important cause, or as a safe bark in which to freight the fortunes, the liberties, and

the reputation of this now respectable and happy land.

Without undertaking to determine which of these opposite opinions rests most firmly on the basis of facts, I shall content myself with observing, that if the latter is conceived to have but a tolerable foundation, it is conclusive against the propriety of our engaging in the war, merely through regard for the cause of Liberty. For when we resolve to put so vast a stake upon the chance of the die, we ought at least to be certain that the object for which we hazard is genuine, is substantial, is real.

Let us then proceed to the discussion of the second question. To judge of the degree of aid which we could afford to France in her present struggle, it may be of use to take a brief view of the means with which we carried on the war, that accomplished our own revolution.

Our supplies were derived from six sources: 1st, paper money; 2d, domestic loans; 3d, foreign loans; 4th, pecuniary taxes; 5th, taxes on specific articles; 6th, military impress.

The first of these resources, with a view to a future war, may be put out of the question. Past experience would forbid its being again successfully employed, and no friend to the morals, property, or industry of the people, to public or private credit, would desire to see it revived.

The second would exist, but probably in a more limited extent. The circumstance of a depreciating paper, which the holders were glad, as they supposed, to realize, was a considerable motive to the

loans obtained during the late war. The magnitude of them, however, even then, formed a small proportion to the aggregate expense.

The third resource would be equally out of the question with the first. The principal lending powers would be our enemies, as they are now those of France.

The three remaining items—pecuniary taxes, taxes on specific articles, military impress—could be employed again in a future war, and are the resources upon which we should have chiefly to rely; for the resource of domestic loans, though valuable, is not a very extensive one, in a community where capitals are so moderate as in ours.

Though it is not to be doubted, that the people of the United States would hereafter, as heretofore, throw their whole property into a common stock for their common defence against internal invasion or an unprovoked attack, who is there sanguine enough to believe, that large contributions of any kind, could be extracted from them to carry on an external war, voluntarily undertaken for a foreign and speculative purpose?

The expectation were an illusion. Those who may entertain it ought to pause and reflect, whatever enthusiasm might have been infused into a part of the community would quickly yield to more just and sober ideas, inculcated by experience of the burthens and calamities of war. The circuitous logic by which it is attempted to be maintained, that a participation in the war is necessary to the security of our own liberty, would then appear as it truly is, a

mere delusion, propagated by bribed incendiaries, or hare-brained enthusiasts; and the authors of the delusion would not fail to be execrated as the enemies of the public weal.

The business would move on heavily in its progress, as it was in its origin impolitic, while the faculty of the government to obtain pecuniary supplies, would, in the case supposed, be circumscribed within a narrow compass; levies of men would not be likely to be more successful. No one would think of detaching the militia for distant expeditions abroad; and the experiences we have had in our Indian enterprises, do not authorize strong expectations of going far by voluntary enlistments, where the question is not, as it was during the last war, the defence of the fundamental rights and essential interests of the whole community. The severe expedient of drafting from the militia, a principal reliance in that war, would put the authority of government in the case to a very critical test.

This summary view of what would be our situation and prospects, is alone sufficient to demonstrate the general position, that our ability to promote the cause of France, by external exertions, could not be such as to be very material to the event.

Let us, however, for more complete elucidation, inquire to what particular objects they could be directed.

Fleets we have not, and could not have, in time, or to an extent, to be of use in the contest.

Shall we raise an army and send it to France? She does not want soldiers. Her own population can

amply furnish her armies. The number we could send, if we could get them there at all, would be of no weight in the scale.

The true wants of France are of system, order, money, provisions, arms, military stores.

System and order we could not give her by engaging in the war. The supply of money in that event would be out of our power. At present we can pay our debt to her in proportion as it becomes due—then we could not do this. Provisions and other supplies, as far as we are in condition to furnish them, could not be furnished at all. The conveyance of them would become more difficult, and the forces we should be obliged ourselves to raise would consume our surplus.

Abandoning, then, as of necessity we must, the idea of aiding France in Europe, shall we turn our attention to the succor of her islands? Alas! we should probably have here only to combat their own internal disorders—to aid Frenchmen against Frenchmen, whites against blacks, or blacks against whites! If we may judge from the past conduct of the powers at war with France, their effort is immediately against herself; her islands are not, in the first instance, a serious object. But grant, as it is not unlikely, that they become so, is it evident that we can co-operate efficaciously to their preservation; or if we can, what will this have to do with the preservation of French liberty? The dangers to this arise from the invasion of foreign armies, carried into the bosom of France—from the still more formidable assault of civil dissension and the spirit of anarchy.

Shall we attack the islands of the powers opposed to France?

How shall we without a competent fleet carry on the necessary expeditions for the purpose? Where is such a fleet? How shall we maintain our conquests after they are made? What influence could the capture of an island or two have upon the general issue of the contest? These questions answer themselves—or shall we endeavor to make a diversion in favor of France, by attacking Canada on the one side and Florida on the other? This certainly would be the most, indeed the only eligible mode of aiding France in war since these enterprises may be considered as within the compass of our means.

But while this is admitted, it ought not to be regarded as a very easy task. The reduction of the countries in question ought not to be undertaken without considerable forces, for reinforcements could be brought to both those countries from the West-India possessions of their respective sovereigns; relying on their naval superiority, they could spare from the islands all the troops which were not necessary for the preservation of their internal tranquillity.

These armies are then to be raised and equipped, and to be provided with all the requisite apparatus for operation. Proportionate magazines are to be formed for their accommodation and supply.

Some men, whose fate it is to think loosely, may imagine that a more summary substitute could be found in the militia. But the militia, an excellent auxiliary for internal defence, could not be advan-

tageously employed in distant expeditions, requiring time and perseverance. For these, men regularly engaged for a competent period are indispensable. The conquest of Canada, at least, may with reason be regarded as out of the reach of a militia operation.

If war was resolved upon, the very preparation of the means for the enterprises which have been mentioned would demand not less than a year; before this period was elapsed, the fate of France, as far as foreign invasion is concerned, would be decided. It would be manifest, either that she could or could not be subjugated by force of external coercion. Our interposition would be too late to benefit her. It appears morally certain, that the war against France cannot be of much duration. The exertions are too mighty to be long protracted.

The only way in which the enterprises in question could serve the cause of France, would be by making a diversion of a part of those forces which would otherwise be directed against her. But this consequence could not be counted upon. It would be known, that we could not be very early ready to attack with effect, and it would be an obvious policy to risk secondary objects rather than be diverted from the efficacious pursuit of the main one. It would be natural in such case to rely for indemnification on the successful result of the war in Europe. The governments concerned imagine that they have too much at stake upon that result, not to hazard considerably elsewhere, in order to secure the fairest chance of its being favorable to their wishes.

It would not probably render the matter better, to

precipitate our measures for the sake of a more speedy impulse. The parties ought in such case to count upon the abortion of our attempts from their immaturity, and to rely the more confidently upon the means of resistance already on the spot. Indeed, that very precipitation would leave no other option.

We could not therefore flatter ourselves that the expedient last proposed—that of attacking the possessions of Great Britain and Spain in our neighborhood, would be materially serviceable to the cause of France.

But to give the argument its fairest course, I shall take notice of two particulars in respect to which our interference would be more sensibly felt. These are the depredations which our privateers might make upon the commerce of the maritime enemies of France, and what is of far greater consequence, the direct injury which would accrue to that of Great Britain from the interruption of intercourse between the two countries. Considering the shock lately sustained by mercantile credit in that country—the real importance to it of our imports from thence, and our exports thither—the large sums which are due, and in a continual course of remittance from our merchants—a war between the United States and Great Britain could not fail to be seriously distressing to her.

Yet it would be weak to calculate upon a very decisive influence of these circumstances. The public credit of Great Britain has still energy sufficient to enable her to struggle with much partial derangement. Her private credit, manifestly disordered by temporary causes, and propped as it has been by the public purse, seems to have recovered, in a great

degree, its impaired tone. Her commerce, too, suddenly interrupted by the breaking out of the war, may be presumed to have resumed its wonted channels, in proportion as the progress of her naval preparations has tended to give it protection, and though the being at war with us would be very far from a matter of indifference either to her commerce or to her credit, yet it is not likely that it would arrest her career, or overrule those paramount considerations which brought her into her present situation.

When we recollect how she maintained herself under a privation of our commerce, through a seven-years' war with us, united for certain periods of it with France, Spain, and Holland, though we perceive a material difference between her present and her then situation, arising from that very effort, yet we cannot reasonably doubt that she would be able, notwithstanding a similar privation, to continue a war, which in fact does not call for an equal exertion on her part, as long as the other powers with which she is associated shall be in condition to prosecute it with a hope of success; nor is it probable, whatever may be the form or manner of the engagement, that Great Britain could, if disposed to peace, honorably make a separate retreat. It is the interest of all parties, in such cases, to assure to each other a co-operation; and it is presumable that this has taken place in some shape or other between the powers at present combined against France.[1]

[1] The treaties between Great Britain, Spain, Russia, and Prussia, which since writing the above have made their appearance, confirm what is here conjectured.

The conclusion from the several considerations which have been presented, carefully and dispassionately weighed, is this, that there is no probable prospect of this country rendering material service to the cause of France, by engaging with her in the war.

It has been very truly observed in the course of the publications on the subject, *that if France is not in some way or other wanting to herself, she will not stand in need of our assistance; and if she is, our assistance cannot save her.* AMERICANUS.

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II.

February 8, 1794.

Let us now turn to the other side of the medal; to be struck with it, it is not necessary to exaggerate.

All who are not wilfully blind must see and acknowledge, that this country at present enjoys an unexampled state of prosperity. That war would interrupt it need not be affirmed. We should then by war lose the advantage of that astonishing progress in strength, wealth, and improvement, which we are now making, and which, if continued for a few years, will place our national rights and interests upon immovable foundations. This loss alone would be of infinite moment; it is such a one as no prudent or good man would encounter but for some clear necessity or some positive duty. If, while Europe is exhausting herself in a destructive war, this country can maintain its peace, the issue will open to us a wide field of advantages, which even imagination can with difficulty compass.

But a check to the progress of our prosperity is not the greatest evil to be anticipated. Considering the naval superiority of the enemies of France, we cannot doubt that our commerce would in a very great degree be annihilated by a war. Our agriculture would of course with our commerce receive a deep wound. The exportations which now continue to animate it could not fail to be essentially diminished. Our mechanics would experience their full share of the common calamity. That lively and profitable industry, which now spreads a smile over all of our cities and towns, would feel an instantaneous and rapid decay.

Nine tenths of our present revenues are derived from commercial duties. Their declension must of course keep pace with that of the trade. A substitute cannot be found in other sources of taxation, without imposing heavy burthens on the people. To support public credit and carry on the war would suppose exactions really grievous. To abandon public credit would be to renounce an important means of carrying on the war; besides the sacrifice of the public creditors and the disgrace of a national bankruptcy.

We will not call in the aid of savage butcheries and depredations to heighten the picture. 'T is enough to say, that a general Indian war, excited by the united influence of Britain and Spain, would not fail to spread desolation throughout our frontier.

To a people who have so recently and so severely felt the evils of war, little more is necessary than to appeal to their own recollection for their magnitude and extent.

The war which now rages is, and for obvious reasons is likely to continue to be, carried on with unusual animosity and rancor. It is highly probable that the resentment of the combined powers against us, if we should take part in it, would be, if possible, still more violent than it is against France. Our interference would be regarded as altogether officious and wanton. How far this idea might lead to the aggravation of the ordinary calamities of war, would deserve serious reflection.

The certain evils of our joining France in the war are sufficient dissuasives from so intemperate a measure. The possible ones are of a nature to call for all our caution, all our prudence.

To defend its own rights, to vindicate its own honor, there are occasions when a nation ought to hazard even its existence. Should such an occasion occur, I trust those who are most averse to commit the peace of the country, will not be the last to face the danger, nor the first to turn their backs upon it.

But let us at least have the consolation of not having rashly courted misfortune. Let us have to act under the animating reflection of being engaged in repelling wrongs, which we neither sought nor merited; in vindicating our rights, invaded without provocation; in defending our honor, violated without cause. Let us not have to reproach ourselves with having voluntarily bartered blessings for calamities.

But we are told that our own liberty is at stake upon the event of the war against France—that if she falls, we shall be the next victim. The com-

bined powers, it is said, will never forgive in us the origination of those principles which were the germs of the French Revolution. They will endeavor to eradicate them from the world.

If this suggestion were ever so well founded, it would perhaps be a sufficient answer to it to say, that our interference is not likely to alter the case; that it would only serve prematurely to exhaust our strength.

But other answers more conclusive present themselves.

The war against France requires, on the part of her enemies, efforts unusually violent. They are obliged to strain every nerve, to exert every resource. However it may terminate, they must find themselves spent in an extreme degree; a situation not very favorable to the undertaking anew, and even to Europe combined, an immense enterprise.

To subvert by force republican liberty in this country, nothing short of entire conquest would suffice. This conquest, with our present increased population, greatly distant as we are from Europe, would either be impracticable, or would demand such exertions as, following immediately upon those which will have been requisite to the subversion of the French Revolution, would be absolutely ruinous to the undertakers.

It is against all probability that an undertaking, pernicious as this would be, even in the event of success, would be attempted against an unoffending nation, by its geographical position little connected with the political concerns of Europe.

But impediments would arise from more special causes. Suppose France subdued, and a restoration of the monarchy in its ancient form, or a partition effected—to uphold either state of things, after the general impulse in favor of liberty which has been given to the minds of twenty-four millions of people, would in one way or another find occupation for a considerable part of the forces which had brought it about.

In the event of an unqualified restoration of the monarchy, if the future monarch did not stand in need of foreign legions for the support of his authority, still the powers which had been concerned in the restoration could not sufficiently rely upon the solidity of the order of things re-established by them, not to keep themselves in a posture to be prepared against the disturbance of it, till there had been time to compose the discordant interests and passions produced by the revolution, and bring back the nation to ancient habits of subordination. In the event of a partition of France, it would of course give occupation to the forces of the conquerors to secure the submission of the dismembered parts.

The new dismemberment of Poland will be another obstacle to the detaching of troops from Europe for a crusade against this country—the fruits of that transaction can only be secured to Russia and Prussia by the agency of large bodies of forces, kept on foot for the purpose, within the dismembered territories.

Of the powers combined against France, there are only three whose interests have any material reference to this country—England, Spain, Holland. As

to Holland, it will be readily conceded that she can have no interest or feeling to induce her to embark in so mad and wicked a project. Let us see how the matter will stand with regard to Spain and England.

The object of the enterprise against us must be, either the establishment in this country of a royal in place of our present republican government, the subjugation of the country to the dominion of one of the parties, or its division among them.

The establishment of an independent monarchy in this country would be so manifestly against the interests of both those nations, in the ordinary acceptation of this term in politics, that neither of them is at all likely to desire it.

It may be adopted as an axiom in our political calculations, that no foreign power which has valuable colonies in America, will be propitious to our remaining one people under a vigorous government.

No man, I believe, but will think it probable, however disadvantageous the change in other respects, that a monarchical government, from its superior force, would ensure more effectually than our present form our permanent unity as a nation. This at least would be the indubitable conclusion of European calculators; from which may be confidently inferred a disinclination in England and Spain to our undergoing a change of that kind.

The only thing that can be imagined capable of reconciling either of those powers to it would be the giving us for monarch a member of its own royal family, and forming something like a family compact.

But here would arise a direct collision of interests

between them. Which of them would agree that a prince of the family of the other should, by reigning over this country, give to that other a decided preponderancy in the scale of American affairs?

The subjugation of the United States to the dominion of those powers would fall more strongly under a like consideration. 'T is impossible that either of them should consent that the other should become master of this country, and neither of them without madness could desire a mastery, which would cost more than 't was worth to maintain it, and which, from an irresistible course of things, could be but of very short duration.

The third, namely, the division of it between them, is the most colorable of the three suppositions. But even this would be the excess of folly in both. The dominion of neither of them could be of any permanency, and while it lasted, would cost more than it was worth. Spain on her part could scarcely fail to be sensible that, from obvious causes, her dominion over the part which was allotted to her would be altogether transient.

The first collision between Britain and Spain would indubitably have one of two effects, either a temporary reunion of the whole country under Great Britain, or a dismission of the yoke of both.

The latter, by far the most probable and eventually certain, would discover to both the extreme absurdity of the project. If the first step was a reunion under Great Britain, the second, and one not long deferred, would be a rejection of her authority.

The United States, rooted as are now the ideas of

independence, are happily too remote from Europe to be governed by her; dominion over any part of them would be a real misfortune to any nation of that quarter of the globe.

To Great Britain, the enterprise supposed would threaten serious consequences in more ways than one. It may safely be affirmed, that she would run by it greater risks of bankruptcy and revolution than we of subjugation. A chief proportion of the burthen would unavoidably fall upon her as the monied and principal maritime power, and it may emphatically be said, that she would make war upon her own commerce and credit. There is the strongest ground to believe that the nation would disrelish and oppose the project. The certainty of great evils attending it, the dread of much greater, experience of the disasters of the last war, would operate upon all; many, not improbably a majority, would see in the enterprise a malignant and wanton hostility against liberty, of which they might themselves expect to be the next victim. Their judgments and their feelings would easily distinguish this case from either that of their former contest with us or their present contest with France. In the former they had pretensions to support which were plausible enough to mislead their pride and their interest. In the latter there were strong circumstances to rouse their passions, alarm their fears, and induce an acquiescence in the course which was pursued.

But a future attack upon us, as is apprehended, would be so absolutely pretextless, as not to be understood. Our conduct will have been such as

to entitle us to the reverse of unfriendly or hostile dispositions, while powerful motives of self-interest would advocate with them our cause.

But Britain, Spain, Austria, Prussia, and perhaps even Russia, will have more need and a stronger desire of peace and repose, to restore and recruit their wasted strength and exhausted treasures, to reinvigorate the interior order and industry of their respective kingdoms, relaxed and depressed by war, than either means or inclination to undertake so extravagant an enterprise against the liberty of this country.

If there can be any danger to us, it must arise from our voluntarily thrusting ourselves into the war. Once embarked, nations sometimes prosecute enterprises of which they would not otherwise have dreamt. The most violent resentment, as before intimated, would no doubt in such a case be kindled against us, for what would be called a wanton and presumptuous intermeddling on our part; what this might produce, it is not easy to calculate.

There are two great errors in our reasoning upon this subject: one, that the combined powers will certainly attribute to us the same principles which they deem so exceptionable in France; the other, that our principles are in fact the same.

If left to themselves they will all, except one, naturally see in us a people who originally resorted to a revolution in government, as a refuge from encroachments on rights and privileges *antecedently* enjoyed, not as a people who from choice sought a radical and entire change in the established government, in pursuit of new privileges and rights carried

to an extreme, irreconcilable perhaps with any form of regular government. They will see in us a people who have a due respect for property and personal security; who, in the midst of our revolution, abstained with exemplary moderation from every thing violent or sanguinary, instituting governments adequate to the protection of persons and property; who, since the completion of our revolution, have in a very short period, from mere reasoning and reflection, without tumult or bloodshed, adopted a form of general government calculated, as well as the nature of things would permit, to remedy antecedent defects, to give strength and security to the nation, to rest the foundations of liberty on the basis of justice, order, and law; who have at all times been content to govern themselves without intermeddling with the affairs or governments of other nations; in fine, they will see in us sincere republicans, but decided enemies to licentiousness and anarchy; sincere republicans, but decided friends to the freedom of opinion, to the order and tranquillity of all mankind. They will not see in us a people whose best passions have been misled, and whose best qualities have been perverted from their true direction by headlong, fanatical, or designing leaders, to the perpetration of acts from which humanity shrinks, to the commission of outrages over which the eye of reason weeps, to the profession and practice of principles which tend to shake the foundations of morality, to dissolve the social bands, to disturb the peace of mankind, to substitute confusion to order, anarchy to government.

Such at least is the light in which the reason or the passions of the powers confederated against France lead them to view her principles and conduct. And it is to be lamented, that so much cause has been given for their opinions. If, on our part, we give no incitement to their passions, facts too prominent and too decisive to be combated will forbid their reason to bestow the same character upon us.

It is therefore matter of real regret, that there should be an effort on our part to level the distinctions which discriminate our case from that of France, to confound the two cases in the view of foreign powers, and to pervert or hazard our own principles by persuading ourselves of a similitude which does not exist.

Let us content ourselves with lamenting the errors into which a great, a gallant, an amiable, a respectable nation has been betrayed, with uniting our wishes and our prayers that the Supreme Ruler of the world will bring them back from those errors to a more sober and more just way of thinking and acting, and will overrule the complicated calamities which surround them, to the establishment of a government under which they may be free, secure, and happy. But let us not corrupt ourselves by false comparisons or glosses, nor shut our eyes to the true nature of transactions which ought to grieve and warn us, nor rashly mingle our destiny in the consequences of the errors and extravagances of another nation.

AMERICANUS.

## HAMILTON TO WASHINGTON

(Cabinet Paper.)

PHILADELPHIA, April 14, 1794.

SIR:—The present is beyond question a great, a difficult, and a perilous crisis in the affairs of this country. * * * In such a crisis it is the duty of every man, according to situation, to contribute all in his power towards preventing evil and producing good. This consideration will, I trust, be a sufficient apology for the liberty I am about to take of submitting, without an official call, the ideas which occupy my mind concerning the actual posture of our public affairs. It cannot but be of great importance that the Chief Magistrate should be informed of the real state of things, and it is not easy for him to have this information but through those principal officers who have most frequent access to him. Hence an obligation on their part to communicate information on occasions like the present.

A course of accurate observation has impressed on my mind a full conviction, that there exists in our councils three considerable parties,—one, decided for preserving peace by every effort which shall any way consist with the ultimate maintenance of the national honor and rights, and disposed to cultivate with all nations a friendly understanding; another, decided for war, and resolved to bring it about by every expedient which shall not too directly violate the public opinion; a third, not absolutely desirous of war, but solicitous at all events to excite and keep alive irritation and ill-humor between the United States and Great Britain, and not unwilling

in the pursuit of this object to expose the peace of the country to imminent hazards.

The views of the first party, in respect to the questions between Great Britain and us, favor the following course of conduct: to take effectual measures of military preparation, creating, in earnest, force and revenue; to vest the President with important powers respecting navigation and commerce for ulterior contingencies—to endeavor by another effort of negotiation, confided to hands able to manage it, and friendly to the object, to obtain reparation for the wrongs we suffer, and a demarkation of a line of conduct to govern in future; to avoid till the issue of that experiment all measures of a nature to occasion a conflict between the motives which might dispose the British Government to do us the justice to which we are entitled and the sense of its own dignity. If that experiment fails, then and not till then to resort to reprisals and war.[1]

The views of the second party, in respect to the same questions, favor the following course of conduct: to say and to do every thing which can have a tendency to stir up the passions of the people and beget a disposition favorable to war; to make use of the inflammation which is excited in the community for the purpose of carrying through measures calculated to disgust Great Britain, and to render an accommodation impracticable without humiliation to her, which they do not believe will be submitted

[1] No better statement of the Federalist policy at this time can be found than is given in this paragraph. No further defence of the wisdom and strength of Washington's position need be offered than Hamilton's few and terse sentences.

to; in fine, to provoke and bring on war by indirect means, without declaring it or even avowing the intention, because they know the public mind is not yet prepared for such an extremity, and they fear to encounter the direct responsibility of being the authors of a war.

The views of the third party lead them to favor the measures of the second—but without a perfect coincidence in the result. They weakly hope that they may hector and vapor with success—that the pride of Great Britain will yield to her interest, and that they may accomplish the object of perpetuating animosity between the two countries without involving war. There are some characters, not numerous, who do not belong to either of these classes, but who fluctuate between them as, in the conflict between Reason and Passion, the one or the other prevails.

It may seem difficult to admit, in the situation of this country, that there are parties of the description of the two last; men who can either systematically meditate war or can be willing to risk it otherwise than by the use of means which they deem necessary to insure reparation for the injuries we experience.

But a due attention to the course of the human passions, as recorded in history, and exemplified by daily occurrences, is sufficient to obviate all difficulty on this head.

Wars oftener proceed from angry and perverse passions, than from cool calculations of interest. This position is admitted without difficulty when we are judging of the hostile appearances in the

measures of Great Britain toward this country. What reason can there be why it should not be as good a test of similar appearances on our part? As men it is equally applicable to us,—and the symptoms are strong of our being readily enough worked up into a degree of rage and frenzy, which goes very far toward silencing the voice of reason and interest.

Those who compose the parties whose measures have a war aspect, are under the influence of some of the strongest passions that can actuate human conduct. They unite from habitual feeling in an implacable hatred to Great Britain and a warm attachment to France. Their animosity against the former is inflamed by the most violent resentment for recent and unprovoked injuries—in many instances by personal loss and suffering of intimate friends and connections. Their sympathy with the latter is increased by the idea of her being engaged in defending the cause of liberty against a combination of despots, who meditate nothing less than the destruction of it throughout the world. In hostility with Britain, they seek the gratification of revenge upon a detested enemy with that of serving a favorite friend, and in this the cause of liberty. They anticipate, also, what is, in their estimation, a great political good, a more complete and permanent alienation from Great Britain, and a more close approximation to France. Those even of them who do not wish the extremity of war consider it as a less evil than a thorough and sincere accommodation with Great Britain, and are willing to risk the former rather than lose an opportunity so favorable as the

present to extend and rivet the springs of ill-will against that nation.

However necessary it is to veil this policy in public, in private there are not much pains taken to disguise it. Some gentlemen do not scruple to say that pacification is and ought to be out of the question.

What has been heretofore said relates only to persons in public character. If we extend our view from these to the community at large, we shall there also find a considerable diversity of opinion—partisans of patience, negotiation, and peace, if possible, and partisans of war. There is no doubt much of irritation now afloat; many advocates for measures tending to produce war. But it would be a great mistake to infer from these appearances that the prevailing sentiment of the country is for war—or that there would be either a willing acquiescence or a zealous co-operation in it if the proceedings of the government should not be such as to render it manifest, beyond question, that war was inevitable, but by an absolute sacrifice of the rights and interests of the nation—that the race of prudence was completely run, and that nothing was done to invite hostility, or left undone to avoid it.

It is to my mind unequivocal that the great mass of opinion in the Eastern States and in the State of New York is against war, if it can be avoided without absolute dishonor or the ultimate sacrifice of essential rights and interests; and I verily believe that the same sentiment is the radical one throughout the United States, *some* of the towns, perhaps, excepted; where even it is much to be doubted whether there

would not be a minority for the affirmative, if the naked question was presented of war, or of measures which should be acknowledged to have a tendency to promote or produce it.

The natural inference from such a state of the public mind is, that if measures are adopted with the disapprobation and dissent of a large and enlightened minority of Congress, which in the event should appear to have been obstacles to a peaceable adjustment of our differences with Great Britain, there would be, under the pressure of the evils produced by them, a deep and extensive dissatisfaction with the conduct of the government—a loss of confidence in it, and an impatience under the measures which war would render unavoidable.

Prosperous as is truly the situation of the country; great as would be the evils of war to it, it would hardly seem to admit of a doubt, that no chance for preserving peace ought to be lost or diminished, in compliance either with resentment, or the speculative ideas which are the arguments for a hostile course of conduct.

At no moment were the indications of a plan on the part of Great Britain to go to war with us sufficiently decisive to preclude the hope of averting it by a negotiation conducted with prudent energy, and seconded by such military preparations as should be demonstrative of a resolution eventually to vindicate our rights. The revocation of the instructions [1] of the 6th of November, even with the

[1] These were the instructions to seize provisions, grain, etc., conveyed in neutral bottoms to France.

relaxation of some pretensions which Great Britain has in former wars maintained against neutral powers, is full evidence that if the system was before for war, it was then changed. The events which have taken place in Europe are of a nature to render it probable that such a system will not be revived, and that by prudent management we may still escape a calamity which we have the strongest motives, internal, as well as external, to shun.

I express myself thus, because it is certainly not an idle apprehension, that the example of France (whose excesses are with too many an object of apology, if not of justification) may be found to have unhinged the orderly principles of the people of this country; and that war, by putting in motion all the turbulent passions, and promoting a further assimilation of our principles with those of France, may prove to be the threshold of disorganization and anarchy.

The late successes of France have produced in this country conclusions much too sanguine with regard to the event of the contest. They no doubt afford a high probability of her being able, eventually, to defend herself, especially under a form of administration of such unexampled vigor as that by which she has of late managed her affairs.

But there will be nothing wonderful in a total reverse of fortune during the ensuing campaign. Human nature must be an absolutely different thing in France from what it has hitherto shown itself to be throughout the globe, and in all ages, if there do not exist, in a large proportion of the French nation, germs of the profoundest discontent, ready to burst

into vegetation the moment there should appear an efficacious prospect of protection and shade from the progress of the invading armies. And if having possessed themselves of some of the keys of France, the principle of the commencing campaign should be different from that of the past, active field operations succeeding to the wasteful and dilatory process of sieges, who can say that victory may not so far crown the enterprises of the coalesced powers, as to open the way to an internal explosion which may prove fatal to the republic? 'T is now evident that another vigorous campaign will be essayed by the allies. The result is, and must be, incalculable.

To you, sir, it is unnecessary to urge the extreme precariousness of the events of war. The inference to be drawn is too manifest to escape your penetration. This country ought not to set itself afloat upon an ocean so fluctuating, so dangerous, and so uncertain, but in a case of absolute necessity.

That necessity is certainly not yet apparent. The circumstances which have been noticed with regard to the recent change of conduct on the part of Great Britain, authorize a strong hope that a negotiation, conducted with ability and moderation, and supported at home by demonstrations of vigor and seriousness, would obviate those causes of collision which are the most urgent—might even terminate others, which have so long fostered dissatisfaction and enmity. There is room to suppose that the moment is peculiarly favorable to such an attempt. On this point there are symptoms of a common sentiment between the advocates and the opposers of an unembarrassed

attempt to negotiate: the former desiring it from the confidence they have in its probable success; the *latter, from the same cause, endeavoring either to prevent its going on under right auspices, or to clog it with impediments which will frustrate its effect.*

All ostensibly agree, that one more experiment of negotiation ought to precede actual war; but there is this serious difference in the practice. The sincere friends of peace and accommodation are for leaving things in a state which will enable Great Britain, without abandoning self-respect, to do us the justice we seek. The others are for placing things upon a footing which would involve the disgrace or disrepute of having receded through intimidation.

This last scheme indubitably ends in war. The folly is too great to be seriously entertained by the discerning part of those who affect to believe the position—that Great Britain, fortified by the alliances of the greatest part of Europe, will submit to our demands, urged with the face of coercion, and preceded by acts of reprisal. She cannot do it without renouncing her pride and her dignity, without losing her consequence and weight in the scale of nations; and, consequently, it is morally certain that she will not do it. A proper estimate of the operation of the human passions, must satisfy us that she would be less disposed to receive the law from us than from any other nation—a people recently become a nation, not long since one of her dependencies, and as yet, if a Hercules, a Hercules in the cradle.

When one nation inflicts injuries upon another,

which are causes of war, if this other means to negotiate before it goes to war, the usual and received course is to prepare for war, and proceed to negotiation, avoiding reprisals till the issue of the negotiation. This course is recommended by all enlightened writers on the laws of nations, as the course of moderation, propriety, and wisdom; and it is that commonly pursued, except where there is a disposition to go to war, or a commanding superiority of power.

Preparation for war, in such cases, contains in it nothing offensive. It is a mere precaution for self-defence, under circumstances which endanger the breaking out of war. It gives rise to no point of honor which can be a bar to equitable and amicable negotiation. But acts of reprisal speak a contrary effect—they change negotiation into peremptory demand, and they brandish a rod over the party on whom the demand is made. He must be humble indeed, if he comply with the demand to avoid the stripe.

Such are the propositions which have lately appeared in the House of Representatives, for the sequestration or arrestation of British debts—for the cutting off all intercourse with Great Britain, till she shall do certain specific things. If such propositions pass, they can only be regarded as provocatives to a declaration of war by Great Britain.

The sequestration of debts is treated by all writers as one of the highest species of reprisal. It is, moreover, contrary to the most approved practice of the present century; to what may be safely pronounced to be the modern rule of the law of nations; to what

is so plainly dictated by original principles of justice and good faith, that nothing but the barbarism of times in which war was the principal business of man could ever have tolerated an opposite practice; to the manifest interest of a people situated like that of the United States, which, having a vast fund of materials for improvement in various ways, ought to invite into the channels of their industry the capital of Europe, by giving to it inviolable security,—which, giving little facility to extensive revenue from taxation, ought, for its own safety in war, to cherish its credit by a religious observance of the rules of credit in all their branches.

The proposition for cutting off all intercourse with Great Britain has not yet sufficiently developed itself to enable us to pronounce what it truly is. It may be so extensive in its provisions as even to include in fact, though not in form, sequestration, by rendering remittances penal or impracticable. Indeed, it can scarcely avoid so far interfering with the payment of debts already contracted, as in a great degree to amount to a virtual sequestration. But, however this may be, being adopted for the express purpose of retaliating or punishing injuries, to continue until those injuries are redressed, it is in the spirit of a reprisal. Its principle is avowedly coercion—a principle directly opposite to that of negotiation, which supposes an appeal to the reason and justice of the party. Caustic and stimulant in the highest degree, it cannot fail to have a correspondent effect upon the minds of those against whom it is directed. It cannot fail to be viewed as

originating in motives of the most hostile and overbearing kind; to stir up all the feelings of pride and resentment in the nation as well as in the Cabinet; and, consequently, to render negotiations abortive.

It will be wonderful if the immediate effect of either of these measures be not either war or the seizure of our vessels wherever they are found, on the ground of keeping them as hostages for the debts due to the British merchants, and on the additional ground of the measures themselves being either acts of hostility or evidence of a disposition to hostility.

The interpretation will naturally be that our views, originally pacific, have changed with the change in the affairs of France, and are now bent towards war.

The measures in question, besides the objection to them resulting from their tendency to produce war, are condemned by a comprehensive and enlightened view of their operation in other respects. They cannot but have a malignant influence upon our public and mercantile credit. They will be regarded abroad as violent and precipitate. It will be said, there is no reliance to be placed on the steadiness or solidity of concerns with this people. Every gust that arises on the political sky is the signal for measures tending to destroy their ability to pay or to obstruct the course of payment. Instead of a people pacific, forbearing, moderate, and of rigid probity, we see in them a people turbulent, hasty, intemperate, and loose, sporting with their individual obligations, and disturbing the general course of their affairs with levity and inconsiderateness.

Such will indubitably be the comment upon our conduct. The favorable impressions now entertained of the character of our government and nation will infallibly be reversed.

The cutting off of intercourse with Great Britain, to distress her seriously, must extend to the prohibition of all her commodities, indirectly as well as directly; else it will have no other operation than to transfer the trade between the two countries to the hands of foreigners, to our disadvantage more than to that of Great Britain.

If it extends to the total prohibition of her commodities, however brought, it deprives us of a supply, for which no substitute can be found elsewhere—a supply necessary to us in peace, and more necessary to us if we are to go to war. It gives a sudden and violent blow to our revenue, which cannot easily, if at all, be repaired from other resources. It will give so great an interruption to commerce as may very possibly interfere with the payment of the duties which have heretofore accrued, and bring the Treasury to an absolute stoppage of payment—an event which would cut up credit by the roots.

The consequences of so great and so sudden a disturbance of our trade, which must affect our exports as well as our imports, cannot be calculated. An excessive rise in the price of foreign commodities—a proportionable decrease of price and demand of our own commodities—the derangement of our revenue and credit,—these circumstances united may occasion the most dangerous dissatisfactions and disorders in the community, and may drive the

government to a disgraceful retreat, independent of foreign causes.

To adopt the measure *in terrorem*, and postpone its operation, will be scarcely a mitigation of the evil. The expectation of it will, as to our imports, have the effect of the reality, since we must obtain what we want chiefly upon credit. Our supply and our revenue, therefore, will suffer nearly as much as if there was an immediate interruption.

The effect with regard to our peace will be the same. The principle being menace and coercion, will equally recommend resistance to the policy as well as the pride of the other party. 'T is only to consult our own hearts to be convinced that nations, like individuals, revolt at the idea of being guided by external compulsion. They will, at least, only yield to that idea after resistance has been fruitlessly tried in all its forms.

'T is as great an error for a nation to overrate us as to underrate itself. Presumption is as great a fault as timidity. 'T is our error to overrate ourselves and underrate Great Britain; we forget how little we can annoy, how much we may be annoyed.

'T is enough for us, situated as we are, to be resolved to vindicate our honor and rights in the last extremity. To precipitate a great conflict of any sort is utterly unsuited to our condition, to our strength, or to our resources. This is a truth to be well weighed by every wise and dispassionate man, as the rule of public action.

There are two ideas of immense consequence to us in the event of war: the disunion of our enemies;

the perfect union of our own citizens. Justice and moderation, united with firmness, are the means to secure both these advantages; injustice or intemperance will lose both.

Unanimity among ourselves, which is the most important of the two ideas, can only be secured by its being manifest, if war ensues, that it was inevitable by another course of conduct. This cannot and will not be the case, if measures so intemperate as those which are meditated take place. The inference will be, that the war was brought on by the design of some and the rashness of others. This inference will be universal in the Northern States; and to you, sir, I need not urge the importance of those States in war.

Want of unanimity will naturally tend to render the operations of war feeble and heavy, to destroy both effort and perseverance. War, undertaken under such auspices, can scarcely end in any thing better than an inglorious and disadvantageous peace. What worse it may produce is beyond the reach of human foresight.

The foregoing observations are designed to convey to the mind of the President information of the true state of things at the present juncture, and to present to his consideration the general reasons which have occurred to me against the course of proceeding which appears to be favored by a majority of the House of Representatives.

My solicitude for the public interest, according to the view I have of it, and my real respect and regard for him to whom I address myself, lead me

to subjoin some reflections of a more delicate nature.

The crisis is such a one as involves the highest responsibility on the part of every one who may have to act a part in it. It is one in which every man will be understood to be bound to act according to his judgment without concession to the ideas of others. The President, who has by the Constitution a right to object to laws which he deems contrary to the public interest, will be considered as under an indispensable obligation to exercise that right against any measure, relating to so vast a point as that of the peace of the country, which shall not accord with his opinion. The consideration of its having been adopted by both Houses of Congress, and of respect for their opinions, will have no weight in such a case as a reason for forbearing to exercise the right of objection. The consequence is, that the not objecting will be deemed conclusive evidence of approbation, and will implicate the President in all the consequences of the measure.

In such a position of things, it is therefore of the utmost importance to him, as well as to the community, that he should trace out in his own mind such a plan as he thinks it would be eligible to pursue, and should endeavor, by proper and constitutional means, to give the deliberations of Congress a direction towards that plan.

Else he runs the risk of being reduced to the dilemma either of assenting to measures which he may not approve, with a full responsibility for consequences, or of objecting to measures which have

already received the sanction of the two Houses of Congress, with the responsibility of having resisted and probably prevented what they meditated. Neither of these alternatives is a desirable one.

It seems advisable, then, that the President should come to a conclusion whether the plan ought to be preparation for war, and negotiation unincumbered by measures which forbid the expectation of success, or immediate measures of a coercive tendency, to be accompanied with the ceremony of a demand of redress. For I believe there is no middle plan between those two courses.

If the former appears to him to be the true policy of the country, I submit it as my conviction, that it is *urgent* for him to demonstrate that opinion as a preventive of wrong measures and future embarrassment.

The mode of doing it which occurs is this: to nominate a person who will have the confidence of those who think peace still within our reach, and who may be thought qualified for the mission as Envoy Extraordinary to Great Britain; to announce this to the one as well as the other House of Congress, with an observation that it is done with an intention to make a solemn appeal to the justice and good sense of the British Government, to avoid if possible an ulterior rupture, and adjust the causes of misunderstanding between the two countries, and with *an earnest recommendation that vigorous and effectual measures may be adopted to be prepared for war, should it become inevitable, abstaining for the present from measures which may be contrary to the spirit of an attempt to adjust existing differences by negotiation.*

Knowing as I do, sir, that I am among the persons who have been in your contemplation to be employed in the capacity I have mentioned, I should not have taken the present step, had I not been resolved at the same time to advise you with decision to drop me from the consideration, and to fix upon another character. I am not unapprised of what has been the bias of your opinion on the subject. I am well aware of all the collateral obstacles which exist; and I assure you in the utmost sincerity that I shall be completely and entirely satisfied with the election of another.

I beg leave to add, that of the persons whom you would deem free from any constitutional objections, Mr. Jay is the only man in whose qualifications for success there would be thorough confidence, and him whom alone it would be advisable to send. I think the business would have the best chance possible in his hands, and I flatter myself that his mission would issue in a manner that would produce the most important good to the nation.

Let me add, sir, that those whom I call the sober-minded men of the country look up to you with solicitude upon the present occasion. If happily you should be the instrument of still rescuing the country from the dangers and calamities of war, there is no part of your life, sir, which will produce to you more real satisfaction or true glory than that which shall be distinguished by this very important service.

In any event, I cannot doubt, sir, that you will do justice to the motives which impel me, and that you

will see in this proceeding another proof of my sincere wishes for your honor and happiness, and anxiety for the public weal.

With the truest respect and attachment,

I have the honor to be, etc.[1]

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### HAMILTON TO WASHINGTON

(Cabinet Paper.)

April 23, 1794.

Mr. Hamilton presents his respects to the President. In compliance with the desire expressed by him, Mr. H. has made a memorandum of certain points for consideration, in preparing instructions for Mr. Jay, which are herewith sent.

*Points to be Considered in the Instructions to Mr. Jay, Envoy Extraordinary to Great Britain*

I.—Indemnification for the depredations upon our commerce, according to a rule to be settled.

The desirable rule is that which theoretical writers lay down as the rule of the law of nations—to wit: that none but articles by general usage deemed contraband shall be liable to confiscation, and that the carrying of such articles shall not infect other parts of a cargo, nor even a vessel carrying them, where there are no appearances of a design to conceal.

Our treaties contain a good guide as to contraband

[1] This is one of the most important letters ever penned by Hamilton. Washington followed his advice to the letter, and Hamilton's withdrawal of his own name as a candidate for a mission he desired was an act of unselfish patriotism which cannot be too highly praised.

articles, which fall under general denomination of *instrumenta belli*—instruments of war.

But if it should be found impracticable to establish this rule, the following qualifications of it occur for consideration:

1st. Whether provisions (defining what shall be such) may not be excepted, so far as to render them liable, when going to an enemy's port not blockaded, to be carried into the port of the other enemy, and converted to his use, paying the full value. A good rule for estimating this value would be the costs and charges at the place of exportation, with the addition of —— per cent.

2d. Whether colony produce, going directly from the colony to the mother country, may not be added to the list of contraband articles?

Or, in the last resort, whether the rule in this particular, resulting from the instructions of the 8th of January last, may not be admitted—to wit: that colony produce, going directly from the colony to any port in Europe, may be confiscated.

This is a principle which, it is understood, has been long adhered to by Great Britain, and finds a sanction in precedents under the ancient government of France and other maritime powers.

The indemnification for prizes made by proscribed vessels, of which an expectation has been given by the President, may be confirmed by convention.

II.—Arrangement with regard to the future:

The basis to be the rule already quoted of the general law of nations.

But it is probable that the same exceptions which

may be insisted upon as to indemnification for the past, will also be insisted upon as to the future.

The idea of a place blockaded or besieged by construction, which is not actually so, ought to be excluded in either case.

A stipulation against the sale of prizes in our ports will probably be insisted upon; and it is just that it should be made.

A stipulation that, in case of war with any Indian tribe, the other party shall furnish no supplies whatever to that tribe, except such, and in such quantity only, as it was accustomed to furnish previous to the war; and the party at war to have a right to keep an agent or agents at the posts or settlements of the other party nearest to such Indians, to ascertain the faithful execution of this *stipulation.*

Grounds of adjustment with regard to the late treaty of peace.

*On the Part of the British*

1st. Indemnification for our negroes carried away.
2d. Surrender of our posts.

*On the Part of the United States*

1st. Indemnification for the obstructions to the recovery of debts not exceeding —— sterling.

It may be desired, and would it not be our interest to agree, that neither party shall in time of peace keep up any armed force upon the lakes, nor any fortified places nearer than —— miles to the lakes, except

small posts for small guards (the number to be defined) stationed for the security of trading houses?

Would it not be also our interest to agree to an arrangement by which each party shall permit to the other, under due precaution and regulations, a free trade with the Indian tribes inhabiting within the limits of the other?

### *Treaty of Commerce*

The *statu quo* may be taken with the following exceptions:

A privilege to carry to the West India Islands in our vessels of certain burthens (say not less than sixty tons, nor more than eighty tons) all such articles as may now be carried thither from the United States in British bottoms; and to bring from thence directly to the United States all such articles as may now be brought from thence to the United States in British bottoms. The privilege of carrying to Great Britain and Ireland, manufactures of the United States similar to those which now are or hereafter may be allowed to be carried thither by other nations who stand on the footing of the most favored nation, and upon terms of admission equally good.

### *As Equivalents*

The extra tonnage and duties on British vessels and goods imported in British vessels to be done away, and, if desired, a stipulation to be entered into, that the commodities and manufactures of Great Britain and Ireland may be imported into the United

States upon terms equally good with the like commodities and manufactures of any other nation; and that the duties upon such of them as now pay ten per cent. ad valorem and upwards, shall not be increased; and that the duties upon such of them as now pay under ten per cent. ad valorem, shall not be increased beyond ten per cent.

A treaty on these terms to be made for any term not exceeding —— years.

But if such a treaty cannot be made, it deserves consideration, whether a treaty on this basis of the *statu quo* for a short term (say five years) may not be advisable as an expedient for preserving peace between the two countries.

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### HAMILTON TO RANDOLPH [1]

April 27, 1794.

DEAR SIR:—I did not receive the draft of your reply to Mr. Hammond, on the subject of the instructions of the 8th of June, till bedtime, last night, nor could I, without a much more considerable delay than seems to comport with your plan, pretend to enter into an accurate sifting scrutiny of this paper.

I must therefore confine myself to a very few remarks.

If my memory serves me right:

I.—Your position, that the United States alone suffer from the operation of the above-mentioned

[1] Randolph was now Secretary of State, Jefferson having retired at the beginning of New Year in a good deal of disgust to Monticello.

instructions, is not accurate. I take it, that provisions on board all neutral vessels going to any port of France are liable to the same treatment, except in the single case of their going to a place blockaded or besieged, when the rigor of the law of nations is enforced against us by a *confiscation* in the first instance; whereas, in respect to Sweden and Denmark, it is mitigated by the circumstance of admonition first, and confiscation afterwards. But even in this particular, the other neutral powers (Sweden and Denmark excepted) were left in the same predicament with us. I do not understand, either, that in fact any ports of France have been deemed blockaded, so as to produce *confiscation*, except those *actually* so. But not having the instructions before me, I cannot speak with precision.

II.—You seem to take the position too strictly—that none but such articles as are peculiar to war are deemed contraband. Other articles besides these are usually deemed contraband (as *naval stores*, which are the general instrument of commerce in time of peace, as well as a means of war).

III.—You appeal strongly to the conduct of Great Britain for a century past, as to the question of provisions being treated as contraband or otherwise interdicted from being carried to an enemy's country. I fear examples may be cited upon you which will include the point, and more. Is there not a treaty between Holland and England within a century, which goes much further? And you may be, perhaps, pressed by examples from other countries. I remember a declaration from France to the States-

General (in the time of Louis XIV., as I believe), which imposes much more extensive restrictions.

IV.—There appears to me too much tartness in various parts of the reply. Energy, without asperity, seems best to comport with the dignity of national language. The force ought to be more in the idea, than in the expression or manner. The subject of the paper is the instructions of the 8th of June, not those of the 6th of November. I suspect from some later lights which I have received, that more of justification for the former can be found in the practice of nations than I was originally aware of; and the expression of our sensibility, and the energy of our resistance, ought to be proportioned to the nature of the case.

On the whole, I submit whether it be not advisable to give no other reply than a general one, declaring that the doctrines advanced in support of the instructions of the 8th of June do not appear to us well-founded, but that being among the objects committed to Mr. Jay's negotiation, a particular reply is forborne. We are still in the path of negotiation; let us not plant it with thorns.

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## PART OF INSTRUCTIONS TO JOHN JAY

(Draft by Hamilton.)

1794.

This enumeration presents generally the objects which it is desirable to comprise in a commercial treaty; not that it is expected that one can be

effected with so great a latitude of advantages. If to the actual footing of our commerce and navigation with British European dominions could be added the privilege of carrying directly from the United States to the British West India Islands, in our own bottoms generally, or of certain defined burthens, the articles which, by the act of the 28th of George III., chapter 6th, may be carried thither in British bottoms, and of bringing from those islands directly to the United States, in our bottoms of the like description, the articles which by the same act may be brought from those islands to the United States in British bottoms,—this would afford an acceptable basis of a treaty for a term not exceeding fifteen years; and it would be advisable to conclude a treaty upon that basis.

But if a treaty cannot be formed upon a basis as liberal as this, it is conceived that it would not be expedient to do any thing more than to digest the articles of such a one as the British Government shall appear willing to accede to—referring it here for consideration and further instruction previous to a formal conclusion.

There are other points which it would be interesting to comprehend in a treaty, and which it is presumed would not be attended with difficulty. Among these is the admission of our commodities and manufactures generally, into the European dominions of Great Britain, upon a footing equally good with those of other foreign countries.[1]

[1] This is now the case, though a general impression to the contrary has prevailed. See Proclamation of 1792.

At present only certain enumerated articles are admitted. But though this enumeration embraces all the articles which it is of present material consequence to us to export to those dominions, yet in process of time an extension of the objects may become of moment. The fixing of the privileges which we now enjoy by toleration of the Company's government in the British East Indies, if any arrangement could be made with the consent of the Company for that purpose, would also be a valuable ingredient.

The foregoing is conformed to the ideas in which the Secretary of War and Attorney-General appeared to concur.

It is my opinion, that if an indemnification for the depredations committed on our trade, and the execution of those points of the treaty of peace which remain unexecuted on the part of Great Britain, can be accomplished on satisfactory terms, and it should appear a necessary means to this end, to combine a treaty of commerce for a short term on the footing of the *statu quo*, the conclusion of such a treaty would be consistent with the interests of the United States.

A. Hamilton.

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### HAMILTON TO JAY

(Cabinet Paper.)

Philadelphia, May 6, 1794.

My Dear Sir:

I send you herewith sundry papers and documents which contain information that may not be useless

to you in your mission. I had wished to have found leisure to say many things to you, but my occupations permit me to offer only a few loose observations.

We are both impressed equally strongly with the great importance of a right adjustment of all matters of past controversy and future good understanding with Great Britain. Yet, important as this object is, it will be better to do nothing, than to do any thing that will not stand the test of the severest scrutiny—and especially, which may be construed into the relinquishment of a substantial right or interest.

The object of indemnification for the depredations committed on our trade, in consequence of the instructions of the 6th of November, is very near the hearts and feelings of the people of this country. The proceeding was an atrocious one. It would not answer in this particular to make any arrangement on the *mere appearance* of indemnification. If nothing substantial can be *agreed upon*, it will be best to content yourself with endeavoring to dispose the British Cabinet, of their own accord, to go as far as they think fit in reparation, leaving the United States at full liberty to act afterwards as they deem proper. I am, however, still of opinion that *substantial* indemnification, on the principles of the instruction of January 8th, may in the last resort be admissible.

What I have said goes upon the idea of the affair of indemnification standing alone. If you can effect solid arrangements with regard to the points unexecuted of the treaty of peace, the question of in-

demnification may be managed with less rigor, and may be still more laxly dealt with, if a truly beneficial treaty of commerce, embracing privileges in the West India Islands, can be established. It will be worth the while of the government of this country, in such case, to satisfy, itself, its own citizens who have suffered.

The principle of Great Britain is that a neutral nation ought not to be permitted to carry on, in time of war, a commerce with a nation at war, which it could not carry on with that nation in time of peace. It is not without importance in this question, that the peace system of France allowed our vessels access to her islands with a variety of our principal staples, and allowed us to take from thence some of their products; and that, by frequent colonial regulations, this privilege extended to almost all other articles.

The great political and commercial considerations which ought to influence the conduct of Great Britain towards this country are familiar to you. They are strengthened by their increasing acquisitions in the West Indies, if these shall be ultimately confirmed, which seems to create an absolute dependence on us for supply.

I see not how it can be disputed with you, that this country, in a commercial sense, is more important to Great Britain than any other. The articles she takes from us are certainly precious to her; important, perhaps essential, to the ordinary subsistence of her islands; not unimportant to her own subsistence *occasionally;* always very important to her

manufactures, and of real consequence to her revenue. As a consumer, the paper will show that we stand unrivalled. We now consume of her exports from a million to a million and a half sterling more in value than any other foreign country; and while the consumption of other countries, from obvious causes, is likely to be stationary, that of this country is increasing, and for a long series of years will increase rapidly. Our manufactures are no doubt progressive. But our population and means progress so much faster, that our demand for manufactured supply far outgoes the progress of our faculty to manufacture. Nor can this cease to be the case for any calculable period of time.

How unwise then in Great Britain, to suffer such a state of affairs to remain exposed to the hazard of constant interruption and derangement, by not fixing on the basis of a good treaty the principles on which it should continue.

Among the considerations which ought to lead her to a treaty, is the obtaining a renunciation of all pretension of right to sequester or confiscate debts by way of reprisal, etc., though I have no doubt this is the modern law of nations. Yet the point of right cannot be considered so absolutely settled as not to make it interesting to fix it by treaty.

There is a fact which has escaped observation in this country, and which, as there has existed too much disposition to convulse our trade, I have not thought it prudent to bring into view, which it is interesting you should be apprised of. An act of Parliament (27 Geo. III., chap. 27) allows *foreign*

*European vessels*, single decked and not exceeding seventy tons burthen, to carry to certain ports in the British West Indies, particular articles therein enumerated, and also to take from thence certain articles.

This consequently puts an end to the question of precedent, which is so strongly urged against a departure from the British navigation act in our favor, since it gives the precedent of such a departure in favor of others, and to our *exclusion*—a circumstance worthy of particular notice. Our relative situation gives us a stronger plea for an exception in our favor, than any other nation can urge. In paper B the idea of a treaty of commerce on the footing of a *statu quo*, for a short period (say five years), is brought into view. I should understand this as admissible *only* in the event of a satisfactory arrangement with regard to the points unexecuted of the treaty of peace.

But you will discover from your instructions, that the opinion which has prevailed is, that such a treaty of commerce ought not to be *concluded* without previous reference here for further instruction. It is desirable, however, to push the British ministry in this respect to a result, that the extent of their views may be ascertained.

The navigation of the Mississippi is to us an object of immense consequence. Besides other considerations connected with it, if the Government of the United States can procure and secure the enjoyment of it to our Western country, it will be an infinitely strong link of union between that country and the

Atlantic States. As its preservation will depend on the naval resources of the Atlantic States, the Western country cannot but feel that this essential interest depends on its remaining firmly united with them.

If any thing could be done with Great Britain to increase our chances for the speedy enjoyment of this right, it would be, in my judgment, a very valuable ingredient in any arrangement you could make. Nor is Great Britain without a great interest in the question, if the arrangement shall give to her a participation in that navigation, and a treaty of commerce shall admit her advantageously into this large field of commercial adventure.

May it not be possible to obtain a guaranty of our right in this particular from Great Britain, on the condition of mutual enjoyment and a trade on the same terms as to our Atlantic ports?

This is a delicate subject, not well matured in my mind. It is the more delicate, as there is at this moment a negotiation pending with Spain, in a position I believe not altogether unpromising, and ill use might be made of any overture or intimation on the subject. Indeed, in such a posture of the thing, an eventual arrangement only could be proper. I throw out the subject merely that you may contemplate it.

With the most fervent wishes for your health, comfort, and success, I remain, etc.

TREATY PROJECT

1794.

An import duty, not exceeding 10 per cent. ad valorem at the place of exportation, may be laid on manufactures of flax, hemp, wool, cotton, silk, furs, or of mixtures of either, of gold, silver, copper, brass, iron, steel, tin, pewter, or of which either of these metals is the material or chief value; upon flour, salted beef, pork, and fish, and oils of every kind. Bar iron and bar lead, nails and spikes, steel unwrought, cables, cordage, yarn, twine, and packthread, shall not be deemed to be included in the foregoing enumeration.

An import duty, not exceeding 15 per cent. ad valorem at the place of exportation, may be laid upon porcelain or china wares, glass and all manufactures of glass, stone and earthen wares, and generally upon all manufactures of which stone or earth is the principal material.

An import duty, not exceeding 50 per cent. ad valorem at the place of exportation, may be laid on all spirits distilled from fruits. (This is computed on a gallon of brandy costing 2s. sterling.)

An import duty, not exceeding 25 per cent. ad valorem at the place of exportation, may be laid on all wines. Grain of every kind, peas and other vegetables, live cattle, pitch, tar, and turpentine, unmanufactured wood, indigo, pot- and pearl-ash, flax, hemp, cotton, silk, wool, shall be free from duties both on exportation and importation.

Neither party shall impose any duty on the exportation to the countries of the other of any

raw material whatsoever. This prohibition shall be deemed to extend to molasses and tobacco.

An export duty, not exceeding 5 per cent. ad valorem at the place of exportation, may be imposed on all brown and clayed sugars. All articles not specified or described in the foregoing clauses may be rated according to the discretion of each party, both as to exportation and importation; but neither party shall lay any higher duty upon any production or manufacture of the other imported into any part of the dominions of such party, than shall be laid upon the like or a similar production or manufacture of any other nation imported into the same or any other part of the dominions of the said party.

Neither party shall subject the vessels, cargoes, or merchants of the other to any greater charges or burdens within its own ports than its own vessels, cargoes, and merchants shall be subject to within the ports of the other, except as to duties by way of revenue to the government, which may be regulated as either party pleases within the limits and in conformity to the principles established in this treaty.

Neither party shall grant any bounties or premiums upon its own ships, nor upon commodities imported in its own ships, which shall not extend to the ships nor to commodities imported in the ships of the other party; nor upon any commodities whatsoever, with special reference, direct or indirect, to an exportation to the countries of the other.

Neither party shall prohibit an importation into

its own dominions or the vent there of any of the productions or manufactures of the other.

Neither party shall grant or allow, in consequence of any former grant, any privilege or exemption in trade to another nation, which shall not be, *ipso facto*, communicated to the other party. Neither party shall grant to another nation the peculiar privileges and exemptions stipulated by this treaty, except for the peculiar considerations upon which they are herein stipulated. Peculiar privileges and exemptions and peculiar considerations shall be deemed to be those only which are contained in the stipulations of the —— articles.

Neither party shall reduce any existing duties upon the ships, productions, or manufactures of other countries, except by virtue of a treaty founded on a reciprocation of equal privileges and exemptions with those mutually stipulated in the present treaty.

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## HAMILTON TO WASHINGTON

(Cabinet Paper.)

PHILADELPHIA, May 9, 1794.

SIR:—The enclosed letter from Mr. Hammond, of the 6th instant, was transmitted to me by the Secretary of State, with a request that after satisfying myself of the step proper to be taken, I would communicate it to you, and notify your determination to Mr. Hammond.

The copy herewith sent of a letter from Mr. Rawle, exhibits the facts which appear in the case; and

reasoning from them, the conclusion is, that the proceeding complained of is as wanton and unprovoked as it is illegal and disorderly. There is no doubt that justice to the parties concerned, the maintenance of the laws, and the discouragement of a practice which attempts a usurpation of the functions of government and goes in subversion of all order, require that steps should be seriously taken to bring the offenders to justice.

It is the opinion of the attorney of the district that the case is not of the cognizance of the Federal Judiciary. Hence it becomes necessary that it should be referred to the authority of the State. But it appears to be proper under the special circumstances, that a letter should be written on the part of the President to the Governor of Pennsylvania, communicating the case and the complaint of the Minister, and calling upon him in earnest terms to cause the proper legal steps to be taken to bring the offenders to justice, and thereby give security to the parties and repress so exceptionable and disorderly a spirit.

With regard to the restoration of the vessel in the condition in which she was preceding the trespass, it is not perceived that the nature of the case requires the extraordinary interposition of the government for that purpose, and the precedent might be an embarrassing one. The vessel is one belonging to citizens of the United States, employed, indeed, as is now stated, by a British consul, but for the personal accommodation of certain subjects of Great Britain—that is, to convey them to their own

country, not for a purpose properly governmental. It is not perceived that this situation sufficiently distinguishes her case from the common one of a vessel suffering injury by the trespass of unauthorized and lawless individuals, for the redress of which, including indemnification, the ordinary course of law is competent. It is not understood that there exists any impediment to the repossession of the vessel by her commander.

If these ideas are approved by the President, it will remain to direct the proper communications to the Governor and to the British Minister.

With perfect respect, etc.

P. S.—I will have the honor of waiting on the President between twelve and one o'clock, to know if he has any further commands on the subject.

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### HAMILTON TO WASHINGTON

(Cabinet Paper.)

PHILADELPHIA, June 22, 1794.

SIR:—The Secretary of State, on referring to you the question of the answer to be given to Mr. Hammond concerning compensation for certain captured vessels, will, I presume, transmit to you the opinions of the other gentlemen, as well as his own.

Besides the reasons hastily sketched in the memorandums given to the Secretary of State, there is one of a delicate nature, which I did not think fit to put on a paper which might become a public document but which, I think, ought to be submitted to your consideration.

Though the form of only giving the *opinion* of the President that it was *incumbent upon* the United States to make compensation in the case has been used, yet between nation and nation this is equivalent to a *virtual* engagement that compensation will be made: and we were *all* sensible in advising the President to give that opinion (which advice was unanimous), that a non-compliance with it would be a serious commitment of the character of the nation, the government, and *the President.* Indeed, if the Legislature should not do its part, under such circumstances, it would necessarily give birth to considerations very embarrassing to the delicacy of the President.

In such a posture of things is it not advisable to narrow the obstacles to a right issue of the business? If Mr. Jay is instructed to insert a formal *stipulation* in a *general arrangement*, the Senate only will have to concur. If provision is to be made by law, *both Houses* must concur. The difference is easily seen. And it is a case where the *point of honor* is too materially concerned not to dictate the expediency of leaving as little hazard as possible upon the issue. It is impossible that any question can arise about the *propriety* of giving this course to the business. When we are demanding compensation for our captured vessels and goods, it is the simplest thing in the world, to stipulate compensation for those of Great Britain, which we acknowledge to have been unlawfully made within our territory, or by the use of our means. It is also with me a material consideration, that the coupling this with the other

objects of Mr. Jay's negotiation, may tend to disembarrass in future. If the compensation we seek fails, it may be a good answer to the claim on the other side, that they were endeavored without success to be made a subject of reciprocal stipulation. I speak with reference to the individuals concerned.

I may be, perhaps, too *nice*. But this is one of those questions in which ideas of *sincerity*, *good faith*, and *honor*, in a relation which must always engage my particular solicitude, press my judgment to a course of proceeding which is calculated to dispel all doubt.

With perfect respect, etc.

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### HAMILTON TO RANDOLPH

(Cabinet Paper.)

PHILADELPHIA, July 8, 1794.

The Secretary of the Treasury presents his compliments to the Secretary of State; begs leave to inform him that his opinion on the question lately proposed, respecting the instruction of Mr. Jay, eventually to establish *by treaty* a concert with Sweden and Denmark, is against the measure. The United States have peculiar advantages from situation, which would thereby be thrown into common stock without an equivalent. Denmark and Sweden are too weak and too remote to render a cooperation useful; and the entanglements of a treaty with them might be found very inconvenient. The United States had better stand upon their own ground.

If a war, on the question of neutral rights, should take place, common interest would be likely to secure all the co-operation which is practicable, and occasional arrangements may be made. What has been already done in this respect appears, therefore, to be sufficient.

The subject has varied in the impression entertained of it; but the foregoing is the final result of full reflection.

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### HAMILTON TO RANDOLPH

(Cabinet Paper.)

*Remarks on Lord Grenville's Project of a Commercial Treaty, made at the Request of E. Randolph, Esq., Secretary of State*

1794.

A.—Inasmuch as the light-house duties which are *excepted*, constitute an additional charge on vessels of the United States beyond those of Great Britain in British ports, this article, which puts British vessels in our ports exactly upon the same footing with ours, wants reciprocity. But the most important consideration will be, that as the distinctions which now exist between foreign and our own vessels are really of importance to our trade, our merchants will see them relinquished with reluctance, unless there be some clear equivalent. If the stipulation extends to duties on *goods* brought in British bottoms, the conclusion is so much the stronger.

B.—This article in its operation wants reciprocity. The British system contains *now* numerous prohibi-

tions, ours none. To fix this state of things is to renounce an important right and place ourselves on an unequal footing. It gives a claim to some equivalent.

C.—It may be supposed that the equivalent in both cases is to be found in this article. It would be so (excepting one circumstance that will be presently mentioned), if the duration of the privileges granted was coextensive with that of the other parts of the treaty. But the short term of the privileges here proposed to be granted renders them of *inconsiderable* value. The proviso, too, prohibits vessels of the United States from carrying "*West India*" productions from the British Islands or the United States to any other parts of the world. If this prohibition is to be taken in a literal sense and to extend to the West India possessions of other countries than Great Britain, it would be to renounce a valuable branch of trade now enjoyed, and probably more than would be gained.

D.—The article giving a duration of twelve years to the treaty as it respects the trade with Europe, and of only two years as it respects the West Indies, will be very unacceptable. It will be more so as the project does not even secure the *status quo* with the European dominions of Great Britain—that is, it does not *secure* the particular privileges and exemptions which we now enjoy by proclamation compared with other foreign nations.

Mr. Hamilton communicates these remarks in personal confidence to Mr. Randolph, with this request, that no *copy* of them may be taken, and that this

paper may be returned, after it serves the purpose for which these remarks were requested.

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### HAMILTON TO WASHINGTON

(Cabinet Paper.)

*Remarks on the treaty of amity, commerce, and navigation, made between the United States and Great Britain*

July 9, 1795.

Article I.—This being simply a declaration of peace and friendship, is liable to no observation.

Article II.—This article, by fixing a precise period for the evacuation of the posts, namely, the first of June, 1796, secures that important event as far as a stipulation can do it.

It is objected that the period is too remote, and that reasoning from the past there can be no reliance upon a fulfilment at the time.

It were desirable that a shorter period could have been limited, not only because it is interesting to repossess the posts as early as possible, but because the chances of interfering events which may create impediments are multiplied in proportion to the delay.

But the reasons assigned for it, as contained in one of Mr. Jay's letters, though not satisfactory with regard to us, are not without force with regard to the other party, and it may be added to them, that the British would naturally wish time to establish counter posts within their territories, and that some time would really be requisite to prepare, without

prejudice to their traders, for the future course of their business.

Yet whatever may be the degree of force which may be conceded to the reasons assigned for the delay, this circumstance does not appear to me a good ground of suspicion, that the postponement is with a secret intent to evade the surrender. I rather resolve its principal motive into the desire of preserving the friendship and confidence of the Indians within our territory by the gradual preparation of their minds for the event, and also by giving them sufficient time to close their quarrel with us, leaving things on a footing which it was imagined would incline us to better terms of peace than if we were previously in actual possession of the posts.

The extreme profligacy and contempt of appearances, which are implied in the supposition of an intention to evade the surrender of the posts, after a second and *precise* stipulation, in a treaty which adjusts all the points of difference in a former treaty, are so palpable, that the supposition cannot be indulged without such a distrust of the faith of the party as would forbid an attempt to treat with him. For after all, some future period must have been fixed—and that as well as a more remote one might have been evaded.

Besides that, it appears to be extremely probable that the course of events will fortify the disposition to observe good faith in this particular.

I therefore venture to count with confidence on the surrender of the posts, according to the stipulation, if the treaty is mutually ratified. And this is

in my view a matter of signal importance. Besides opening to us the Indian trade, which is of some value, relieving us effectually from the expenses and mischiefs of Indian wars in that quarter, and giving a secure course to our Western settlements, it breaks up the great and dangerous project of Great Britain to confine us to the Ohio and to possess the intermediate country, and it tends most powerfully to establish the influence and authority of the general government over the Western country. The different ways in which it will have this effect will readily occur. The firm possession by the general government of the Western posts may be considered as a very strong link of connection between the Atlantic and Western country, to maintain which, with the necessary controls, is the knotty point of our affairs, as well as a primary object of our policy.

Moreover, it is to be remarked that the conditional ratification of the treaty, as advised by the Senate, will occasion delays which would render it scarcely possible to effect the surrender sooner than is stipulated, in consequence of the treaty; and at any rate the event could only be retarded, not accelerated, by not closing with the treaty as it stands.

The reservations of this article, with respect to the "*precincts* and *jurisdictions*" of the posts, are criticised on account of the vagueness of the terms. But this criticism does not appear very well founded. It would have been difficult to have hit upon a definition which would have suited all the circumstances of the present occupation; and as any construction which is not entirely absurd will leave full

latitude for the progress of settlement during the short period of the further detention of the posts, a definition was not a matter of moment. In my opinion the true construction will be, that those places where there are settlements and establishments in the vicinity of the posts over which a jurisdiction *in fact* has been exercised since the peace, are to be understood to be comprehended within the terms "precincts and jurisdictions of the posts," and that where there have been no settlements, *gunshot* must be the rule.

Article III.—This article appears on the whole to be advantageous to the United States. Our Indian trade, to which it gives the British access, is unimportant. Theirs, to which we acquire access, is important, and it is believed by persons conversant in the business, that our local situation will enable us to maintain the competition within the British territories on favorable terms. As to other trade, the advantage will be still more clearly with us. The superior facilities of transportation on our side will enable us to supply their possessions with European and East India goods, as well as domestic articles, far more extensively than they can us.

It is objected to this article that the clauses which regard "the admission of British vessels from the sea into the rivers of the United States," etc., and the mutual navigation of the Mississippi, will interfere with the regulations which the United States may hereafter think fit to establish, in order to bring Great Britain to better terms of commerce, etc.

But the ground of this objection appears to be

erroneous. The main and affirmative object of the first clause of the article is to secure an intercourse between the territories situated on each side of the boundary line, by *land* passage and *inland* navigation, with a right to each, for the purpose of this inland navigation, "to navigate all the lakes, rivers, and waters thereof." But lest on the one hand this should be construed to admit by implication a communication from the sea with Canada or Nova Scotia, or through those countries with the sea (a thing not now permitted), it is declared negatively that this shall not be understood to be implied; and lest on the other hand the same provision should be construed to admit by implication that British vessels coming from the sea might go beyond the highest ports of entry *to which our laws now subject foreign vessels*, it is in like manner declared *negatively*, that this shall not be understood to be implied. But this negative of an implication which might have arisen from the principal provision, can by no just rules of reasoning or construction be turned into a grant of a positive privilege, especially being foreign to the object of that principal provision—that is to say, to the grant of a right to navigate by sea to and from our seaports; the subject of the main provision being *land passage* and *inland navigation*.[1]

[1] These terms have no precise legal sense; but they are always used as contra-distinguished from sea navigation, or navigation to and from the sea. I should say, then, that inland navigation begins where navigation from the sea ends;—that navigation from the sea ends at our ports of entry from the sea, where inland navigation begins. This construction is strengthened by the reflection, that, according to the laws of Great Britain and the United States, rivers, as far as the tide flows, are arms of the sea.

The absurdity of such a provision becomes the more manifest by considering that the trade to be regulated by the main provision concerns only that portion of the British territories which is on the continent of America; while the right pretended to be grafted upon it would extend to all the other British territories in whatever part of the world. With as much reason, and on the same principle, might we contend under the article for an access *by sea* to any possessions which Great Britain might have or acquire on the opposite coast of our continent.

The clause with regard to the Mississippi merely admits, as far as depends upon us, a *positive* right to navigate that river to any port or place which the British may have bordering upon it, and a *revocable* right to navigate it to any port or place which we may have bordering upon it. They may use it to come to any such port or place, in as *ample a manner* as they may go to an Atlantic port; but not in a *more ample manner;* consequently a prohibition to come to an Atlantic port will annihilate the conditional permission to go to a port on the Mississippi.

We may, therefore, freely, as to any thing in this article, prohibit British vessels from coming by sea from any part of the world to the United States.

The latter part of the clause gives permission to bring and carry into the respective territories mentioned in the article *in manner aforesaid*, that is to say, *by land passage and inland navigation*, all such goods and merchandise *whose importation shall not be entirely prohibited*, paying such duties only as the respective subjects and citizens are liable to pay.

But we may entirely prohibit any articles we please of the produce or manufacture of Great Britain. And we may prohibit the exportation to Great Britain of any articles whatsoever. Thus will there be ample room to make regulations of the kind alluded to, notwithstanding any thing in this article.

Article IV.—This article, as far as it is operative, is right. A survey is a necessary previous step to determine whether the former treaty can be literally executed; and if not, the adjustment of the matter is referred to future negotiation, which leaves it in the power of both parties to come to such an agreement as they deem reasonable and conformable to the true intent of the former treaty.

Article V.—This article also provides a good mode of settling the controverted point.

Article VI.—It was ever my opinion that no adjustment of the controversy on the inexecution of the former treaty was ever likely to be made, which would not embrace an indemnification for losses sustained, in consequence of legal impediments to the recovery of debts; and indeed it always appeared to me just that an indemnification should be embraced.

The article of the former treaty on this head was, as I conceive, nothing more than the formal sanction of a doctrine which makes part of the modern law or usage of nations. The *confiscation* of private debts in time of war is reprobated by the most approved writers on the laws of nations, and by the negative practice of civilized nations, during the present century. The free recovery of them, therefore, on the return of peace, was a matter of course, and ought

not to have been impeded, had there been no article.

Admitting that the first breaches of the treaty were committed, as we alleged, by Great Britain, still it would not follow that the impediments which the laws of certain States opposed to the recovery of debts were justifiable.

*First*, Because it manifestly lay with the general government, to which belonged the powers of treaty, war, and peace, to decide whether, in consequence of the breaches of treaty on the other part, it would elect to consider as void the whole, or any article of the treaty. The general government never did so decide, but, on the contrary, repeatedly and wisely manifested a different disposition; wisely, because it was inexpedient to set afloat so important a treaty, which terminated the question of the revolution with the government with which we had contended, and to widen a breach which might at an early stage involve us anew in war. Consequently the only competent authority having declined to pronounce, it was a usurpation in any State to take upon itself the business of retaliation.

*Secondly*, Because the interruption of the recovery of debts is contrary (as before observed) to the modern usage of nations, immoral in itself, against the opinions of the generality of enlightened men, and disreputable to the nation which has recourse to it. The practice of most of the States is in conformity with, and a comment upon, this doctrine.

But the question, Who committed the first breach of the treaty? if candidly examined, does not admit

of as clear a solution in our favor as many imagine or assert.

Two breaches of treaty are imputed to Great Britain; one respecting the carrying away of the negroes, and the other respecting the retention of the posts.

As to the first, Great Britain has much to say with truth and justice.

Her proceedings in seducing away our negroes during the war were to the last degree infamous, and form an indelible stain on her annals.

But having done it, it would have been still more infamous to have surrendered them to their masters.

The reply to this may be, that they ought not then to have stipulated it. This is just; but still the inquiry is, whether they have stipulated it; and the odiousness of the thing, as applied to them, is an argument of weight against such a construction of general expressions in the treaty as would imply the obligation to restitution. Odious things are not favored in the interpretation of treaties; and though the restoration *of property* is a favored thing, yet the surrender of persons *to slavery* is an odious thing, speaking in the language of the laws of nations.

The words of the article are, that his Britannic Majesty shall, with all convenient speed, and without *causing any destruction or carrying away any negroes or other property* of the American inhabitants, withdraw all his armies, etc.

There are two constructions of this article: one that the *evacuation should be made without depredation*—that is, without causing any destruction or

carrying away any *property*, which continued to be such (*having undergone no change by the laws of war*) at the time of the evacuation; the other, that there was to be, besides a forbearance to destroy or carry away, a positive *restitution* of all property *taken in the war*, and, *at the time of the evacuation*, *which then existed in kind.*

In favor of the last construction is the most obvious sense of the words; and as it applies to the negroes, merely as an article of property, the justice of restoring what had been taken away in many instances by unwarrantable means.

Against it, and in favor of the first construction, are these considerations.

1. That the expressions are, negroes and *other property;* which puts negroes, cows, horses, and all other articles of *property*, on the same footing, and considers them, if at all liable, equally liable to *restitution*, and all as having equally the common quality of *property* of the American inhabitants.

Could any thing be considered as property of the American inhabitants, at the time of the treaty, and in contemplation of the treaty, which, by the ordinary rules of the laws of war, had previously become the absolute *property of the captors?* Is there any thing which exempts negroes, more than other articles of personal property, from capture and confiscation as booty? If there is not, why should negroes have been claimed under this article, more than the vessels which had been captured and condemned? Is that a probable sense of the treaty which would require such a restitution?

2. If negroes were subjects of capture in war, the captor might proclaim their liberty when in his possession. If once declared free, could the grant be recalled? Could the British Government stipulate the surrender of men made free to slavery? Is it natural to put such a construction upon general words, if they will bear another? Is not this, as it regards the rights of humanity, an odious sense?

3. The treaty will bear another construction—that which is put upon it by the British,—a provision *for greater caution* against depredation or the carrying away of property not changed by the laws of war. It is observable, in confirmation of this, that there is no *stipulation to restore*, but negatively not to *carry away;* whereas, immediately after, in the same article, there follows a clause which stipulates that "archives, records, etc., shall be *restored* and *delivered up*." This different mode of expression seems to denote a different sense in the two cases.

Let it be observed that I do not mean to advocate this sense in preference to the other. I have at different times viewed the matter in different lights, and our ablest lawyers differ concerning it. I even entertain a clear opinion that the article was intended to operate in our sense of it. But, still, this does not obviate the doubt as to its true legal signification.

All I mean to say is, that there is really a well-founded doubt as to the true legal construction; and, in such case, the acting of the other party, on a construction different from ours, could not be

deemed such a clear manifest breach of treaty as to justify retaliation. The point was merely a matter of amicable discussion and negotiation.

If this was a breach of the treaty, it is necessary to note that it was committed in 1783.

The affair of the posts is more embarrassing.

It is necessary, in the first place, to settle when it became the duty of the British to surrender them. The stipulation is, that it shall be done "with all convenient speed." But from which of the treaties are we to date, the *provisional* or the *definitive?* The principle of this question is a point of great difficulty, not settled either by the opinions of writers or by the practice of nations.

I remember that I contended in Congress, shortly after the arrival of the *provisional* treaty, and when it was known that preliminaries had been signed between France and England, that the execution of the treaty was to date from this epoch, and on this position I grounded a motion to recommend to the States a compliance with the article.

But on the vote upon this motion, I was left *alone*, and Congress did not act upon the subject till after the arrival of the definitive treaty—that is, 1784.

This amounts to a construction by our government, that the execution was to date from the *definitive treaty*.

Lord Grenville contends with Mr. Jay for the same position, and urges, consequently, that it was not till after the notice of the ratification by us in England, or, in other words, the exchange of ratifications there, that it could be deemed incumbent

upon them to give orders for the evacuation of the posts; which orders could not well have been given before May, nor have arrived in Canada till July.

After the course pursued by us, as already stated, it is difficult to see what can be objected to this construction. It is true the Atlantic posts were evacuated shortly after the provisional treaty; but it may be justly observed, upon this, that it was done for mutual convenience, and in the spirit of conciliation —not on the score of strict obligation; that, however inconsistent with the spirit of an act for restoring peace it might have been to have detained places in the heart of our settled country, being, besides, the capitals of the States in which they were, there was entire liberty to pursue a stricter rule as to the Western posts, some delay concerning which could not have been of material inconvenience to us; and that it was reasonable to pursue the strict rule here, to see what course the execution of the treaty was likely to take on our part.

But our dilemma is this: that if the delay of orders for evacuating the posts till after the exchange of ratifications of the definitive treaty was a breach of the treaty, *as contended for by Mr. Jefferson*, the delay of acting upon the fifth article till after the ratification of the definitive treaty in this country was equally a breach of the treaty on our part, and a prior, at least a contemporary, breach.

Let us now see how, in point of time, the breaches will stand on our part. In this I shall not aim at an accurate enumeration, but shall select particular instances.

An act of New York for granting a more effectual relief in cases of certain trespasses, passed the 17th of March, 1783.

This act takes away from any person within the British lines who had occupied, injured, or destroyed the property, real or personal, of an inhabitant without the lines, the plea of a military order for so doing; consequently, the justification which he might derive from the laws and usages of war, in contravention of the treaty of peace.

It is true, it preceded for a short time the arrival of the provisional treaty in this country; but it is notorious that it was in expectation and contemplation of the event.

This circumstance of priority of time leads Mr. Jefferson to put this act out of the question; but in fair reasoning this is hardly admissible.

It continued to have, *in fact*, an *extensive operation*, from the time of the evacuation of the city of New York till the repeal of the exceptionable clause, by an act of the 4th of April, 1787.

It hardly appears a satisfactory answer to this to say, as Mr. Jefferson has done, that the courts did not sanction the principle of the act; that in one instance, the case of Rutgers and Waddington, the mayor's court overruled it.

The fact is, that from the very express terms of the act, a general opinion was entertained, embracing almost our whole bar, as well as the public, that it was useless to attempt a defence; and, accordingly, many suits were brought, and many judgments given, without the point being regularly

raised, and many compromises were made, and large sums paid, under the despair of a successful defence. I was for a long time the only practiser who pursued a different course, and opposed the treaty to the act; and though I was never overruled in the Supreme Court, I never got my point established there. I effected many easy compromises to my clients, afraid myself of the event in the Supreme Court, and produced delays till the exceptionable part of the act was repealed. The Supreme Court frequently, in a studied manner, evaded the main question, and turned their decision upon the forms of pleading.

'T is perhaps enough for the other party to say that here was a positive law of a State, unrepealed, and acted upon so as in fact to defeat, in a material degree, the operation of the treaty. The injury was suffered, and there ought never to have existed so critical a conflict between the treaty and the statute law of a State.

If the operation of this law was a breach of the treaty, it was a breach from the *first moment* of the ratification of the provisional articles till the 4th of April, 1787. Nothing could be anterior to it.

Another act, of the 4th of May, 1784, provided a mode by which the foregoing act should have effect upon the estates of absentees, which in several instances produced judgments without opportunity of defence. It is to be observed that the British commander-in-chief early remonstrated against this act as inconsistent with the treaty, and yet it continued unrepealed.

Another act of New York, of the 12th of May, 1784, in the strongest and most express terms, confirms all confiscations before made, notwithstanding any errors in the proceedings, and takes away the writ of error upon any judgment before rendered.

This is substantially a new confiscation. If the judgments before rendered were from error invalid, the confiscations were nullities; to take away the writ of error, which was the mode of annulling them, was equivalent to making new confiscations. This act was an undoubted breach of the treaty, and is prior to the time when the breach by the non-surrender of the posts can be dated.

An act of South Carolina, March 26, 1784, suspends the recovery of British debts for nine months, and then allows them to be recovered in four yearly instalments.

This also was a plain contravention of the treaty, and dates before the breach by non-surrender of the posts.

Virginia, in June, 1784, resolved that her courts should be opened to British suits as soon as reparation should be made with regard to the negroes and posts, or otherwise, as Congress should judge it indispensably necessary.

If her courts were before closed, which this resolution admits, it was in consequence of acts passed prior to the treaty, which her courts had deemed obligatory upon them after the treaty—and it follows that there was a continual violation of the treaty from its ratification till 1787, when Virginia repealed all acts repugnant to the treaty.

Taking, therefore, the carrying away of the negroes to be a breach of treaty, 't is a very moot point whether some of the laws of the States did not produce antecedent breaches.

Putting that out of the question and taking the definitive treaty, according to the construction just put upon it by our own conduct, as the act from which the execution was to date, and allowing reasonable time for the ratification to be notified and exchanged—it is certain that the first breaches were committed by us.

The use of these remarks is to show that a candid and unprejudiced view of the subject tends to moderate the sanguine pretensions which have been built on the suggestion of the first breach having been committed by Great Britain, and to manifest the reasonableness of having stipulated compensation in the cases of the breaches made by us.

Indeed, admitting the first breaches by Great Britain, I do not see that it would affect the conclusion that compensation was to be made.

The following seems to be the fair view of the subject.

Mutual infractions of the treaty had taken place. Either our infractions were to be considered as the equivalents for those of Great Britain, and then having enjoyed the equivalents we had no right to ask reparation in addition—or, if we preferred reparation for the infractions by Great Britain, we were to renounce the equivalents for them.

Then it will follow, that the surrender of the posts on their side would draw with it a right of com-

pensation for the losses suffered by impediments to the recovery of the debts on our side.

In other words, the treaty was to remain mutually broken and unexecuted in certain points, or it was to be reinstated by mutual performance. Performance as to the article of the debts is compensation for the losses sustained by impediments to the recovery, and the removal of those impediments.

In fine, it would, in my judgment, independent of the treaty, have been dishonorable and unjust in us to have interfered with the recovery of private debts; it was dishonorable and unjust to have interfered with them on the grounds which were the pretexts, and it is honorable and just to make compensation. The reputation of the country as well as its peace required the stipulation.

It is not perceived that there is any thing exceptionable in the mode of determining and adjusting the compensations to be made in the cases in which this may be deemed proper—or that any better mode could be substituted. The article appears in general sufficiently well guarded.

Article VII.—This article appears to me as well arranged as could have been expected.

It is objected to as too dilatory, but no reasonable substitute has occurred.

The United States could not have demanded a gross sum, because they had no adequate standard by which to ascertain what was proper. They might have asked too much or too little.

Great Britain, for the same reasons, could not have been expected to agree to the demand of a gross sum.

This is not the way that nations deal with each other, unless where one is in a situation to dictate to the other. This was not our situation.

Indemnification on equitable principles was all that could be expected. This necessarily supposes a mode of ascertaining *with due investigation* the *real* losses.

But one of three modes can well be thought of: to refer the adjustment to the tribunals of the United States, to refer it to the tribunals of Great Britain, or to submit it to referees mutually appointed.

Either of the first two modes was inadmissible, because liable to partiality. The tribunals of the United States could never get hold of these cases without inverting entirely the course of similar transactions. Those of Great Britain will now in many cases decide in the first instance, but no American would choose to leave the ultimate decision there. Referees have therefore a comprehensive power to do justice in all cases in which it could not be obtained in the ordinary course.

But, it is said, 't were better commissioners should have decided in the first instance without reference to the courts for the greater despatch.

This might have had a contrary tendency to that of promoting despatch. Appeals, in a great number of cases, will have gone forward; and it was better they should have had their course, than to be arrested to be turned over to the referees. 'T is probable, from the expedition of admiralty proceedings, that the courts will have done their part by the time the referees are ready to begin.

It is to be observed, too, that this article follows closely the provision with regard to the debts; and it was material this should be the case.

We certainly must prefer that our courts of justice should have a free course in the affair of the debts, in all the cases in which it is now practicable.

The latter clause of this article respects the prizes made within our territorial jurisdiction, or by privateers originally fitted out in our ports, is confined to the cases in which the prizes having been brought within our ports, we forbore to make restitution, and is purely in execution of the opinion of the President conveyed in the letter from Mr. Jefferson, which is annexed to the treaty, and which, by being annexed and referred to, becomes a part of this article.

Agreeing, then, with the laws of nations, with the obligations which our treaties with other nations impose upon us in respect to them, and carrying into effect the expectation previously given by the President, it is liable to no just objection.

Article VIII.—This article seems in all respects unexceptionable.

Article IX.—This article, from having been misunderstood, caused at first much uneasiness. It was considered as giving a permanent reciprocal right to the citizens of the two countries indefinitely to acquire and hold lands in either. But this is manifestly an error, which having been pointed out, the uneasiness has subsided.

It is expressly confined to those holding lands prior to the treaty, (the words are "those who *now*

hold lands,")[1] and makes no alteration in the antecedent state of things which can be at all material in a national light.

It is not certain that it makes any other alteration than that those who *now lawfully* hold lands may convey *those* lands to *aliens*.

It may, however, give rise to this question, whether aliens who *now* hold lands by a defeasible title acquired since the treaty of peace, in States whose laws do not authorize it, are not protected in their acquisitions? But however this question may be decided, it is of little importance; for in fact the alien laws are never enforced, nor likely to be so; and the quantity of lands so holden, which are daily changing owners, is not considered enough to have any consequence in a national scale.

An objection seems to have been raised in the Senate against the constitutionality of this article, as though it entrenched upon the authorities of the States.

But this objection is inadmissible. It would totally subvert the power of making treaties. There can hardly be made a treaty which does not make some alteration in the existing laws, which does not, as its object, control the legislative authority; and from the nature of our Constitution, this must apply to the State laws and Legislatures as well as to those of the Union.

A treaty cannot be made which alters the constitutions of the country, or which infringes any ex-

[1] Mr. King, who has critically examined these points, is of opinion that it does not apply to such cases.

press exceptions to the power of the Constitution of the United States. But it is difficult to assign any other bounds to the power. It may certainly alter the provisions of the statute and municipal laws, and modify the rules of property.

There are stipulations in our treaty of peace with Great Britain, analogous to the one under consideration, the validity of which has never been disputed.

Of this kind is *that* which stipulates that all persons who have any interest in confiscated lands either by debts, marriage settlements, or otherwise, shall meet with no lawful impediment in the prosecution of their just rights; and *that* which stipulates that there *shall be no future confiscations.*

But a much stronger case is found in the XI article of our treaty of amity and commerce with France, which is generally understood and practised upon, as removing, *in toto*, the disability of alienism from all Frenchmen, so far as respects acquiring and holding lands; and certainly gives them important rights with regard to lands which they would not have but for this treaty on account of their alienism.

Indeed, the protection of aliens in the enjoyment of the landed property they hold is a familiar article in treaties of peace; so also stipulations as to rights in lands, more or less qualified, are common in treaties of commerce. And the power of making treaties is *plenary* under our present Constitution; more so than it was under the Confederation, where it has been deemed adequate to do much more in this respect than has been done by the treaty in question.

In fine, the objection to the constitutionality of this article, is manifestly futile.

Article X.—In my opinion this article is nothing more than an affirmance of the modern law and usage of civilized nations, and is valuable as a check upon a measure which, if it could ever take place, would disgrace the government of the country, and injure its true interests.

The general proposition of writers on the laws of nations is, that all enemy's property, wherever found, is liable to seizure and confiscation; but reason pronounces that this is with the exception of all such property as exists *in the faith of the laws of your own country;* such are the several kinds of property which are protected by this article.

And though in remote periods the exception may not have been duly observed, yet the spirit of commerce, diffusing more just ideas, has been giving strength to it for a century past, and a negative usage among nations, according with the opinions of modern writers, authorizes the considering the exception as established.

If there have been deviations from that usage in the actual war of Europe, they form no just objection to this reasoning: for this war has violated, in different instances, most of the most sacred laws of nations.

It is said that the power which is given up by this article was the only effective check upon Great Britain. I answer:

1st. That there existed before no *rightful* or *moral* power; and, notwithstanding the treaty, there will

still exist a power without right or morality. The treaty only adds the sanction of an express, to what was before an implied, pledge of the public faith. The one may be still violated as well as the other; and the only use of the article will be to give prudent and good men an additional argument against an act of national iniquity.

2d. That the fear of the exercise of this power has not hitherto appeared to be a check upon Great Britain; and the menace of its exercise can never take place without doing ourselves more harm than good, by tarnishing our honor and shaking our credit.

3d. That war itself acts as a virtual sequestration of property, by interrupting the course of remittances; and the Government by interfering does little more than render itself liable for the dilapidations of vicious individuals who take advantage of the circumstance; since treaties of peace, unless one party is totally prostrate, will never fail to reinstate private debts.

What benefit did those States derive which had recourse to the expedient of sequestrations in our war? How much wiser and less embarrassing to themselves was the policy of those States who refrained from it. And why did they refrain from it, but because they thought it unwarrantable and impolitic?

I have not the State laws by me, and cannot speak with certainty from memory; but as far as I recollect, a majority of the States, including the most commercial, abstained from the sequestration or

confiscation of private debts, except in the case of convicted or attainted criminals, which may be regarded as an indication of the general opinion. For if ever a war warranted such a measure, it was our *Revolution war.*

I conclude, from the whole, that no honest or truly politic objection lies against this article; and that a willingness to enter into the stipulation is reputable to the country, while an unwillingness would be disreputable to it.

These ten are all the permanent articles. They close the various matters of controversy with Great Britain, and, upon the whole, they close them reasonably. Compensation for the negroes, if not a point of doubtful right, is certainly a point of no great moment. It involves no principle of future operation. It terminates in itself; and the actual pecuniary value of the object is in a national sense inconsiderable and insignificant.

The remaining articles are temporary. I proceed to review them in their order.

Article XI.—This article is a mere introduction to the succeeding articles.

Article XII.—This article is in my judgment an exceptionable one. The principle of a restriction upon any thing which is not the produce of the treaty itself, is unprecedented and wrong. Had it been confined to articles from the British Islands, it would have been justified; but extending to articles from other countries, and, according to the letter, to one which is the growth of our own country, it appeared to me from the beginning inadmissible. It

might also have proved a source of dissatisfaction to France, by interrupting in the midst of the war a regular and just source of supply through us. And though I would not omit any measure which I thought for the national interest, because any foreign power might capriciously dislike it, yet I would do no act giving a reasonable cause of dissatisfaction. And for these reasons I am glad, though at the risk of the treaty, that the Senate has not accepted it.

I do justice to Mr. Jay's reasoning on this subject. He thought rightly that the re-exportation of the articles in ordinary times was a matter of little consequence to this country, and that it was of importance by a formal treaty to establish the precedent of a breach in the navigation system of Great Britain, which might be successively widened. These reasons were not light ones, but they are in my judgment outweighed by the other considerations.

Article XIII.—This article is a valuable one. In considering it, it is necessary to reflect that the privileges we now enjoy in the British East Indies are by the *mere sufferance* of the local government, and *revocable* at pleasure. This article converts into a *right by stipulation*, not all that we before enjoyed by sufferance, but the most essential and extensive part of it—the direct trade between India and the United States. Heretofore by sufferance we have been occasionally let into the coasting trade, and have been permitted to go from India to other countries than the United States. The treaty, though it permits a circuitous trade to India, permits

only a direct trade from India to the United States; but when the articles arrive within the United States, we may re-export them, or do whatever else we please.

But though the treaty does not secure to us an indirect trade from India, nor the coasting trade there, I do not see but that these matters will be left just where they were before—that is, depending on the sufferance or free permission of the British Government in India. When two parties agree that a certain thing shall not be done, it is always with this tacit exception, *unless the party for whose benefit the restriction is imposed shall consent to waive it.* If the British Government finds it expedient to continue to us the advantages not granted by treaty, its permission *ad hoc* will release the restriction in the treaty and confer the right. 'T is by the same permission we have hitherto enjoyed it, and by its continuance we may enjoy it still.

The interest of the other party was the only ground upon which we heretofore enjoyed any privilege in the British East Indies. That interest without the treaty would continue the privilege so long, and so long only, as the interest continued. It will still do the same as to what is not included in the treaty, and the result of the whole is this: that the treaty converts into *matter of right* the most *extensive* and most *valuable part* of a trade, which before was *wholly* matter of sufferance, leaving the *residue now* as it was *before*, matter of sufferance, to be continued or discontinued according to the interest of the party.

Some alarm has been attempted to be excited as

if under this article the British merchants could enter into competition with us in the India trade, and by the superiority of their capitals supplant us. But there is not a syllable in this article which renders this at all more possible now than it was before.

There is a clause which says negatively that our vessels shall pay in India no other or higher duties than are payable on British vessels in the ports of the United States. But as it is at the option of the other party under this article not to make us pay as much tonnage in India as British vessels pay in the United States, so before the treaty it was in their power to make us pay not only as much but more; now by the treaty they are restrained from making us pay more, so that something is gained, nothing lost. There is a clause which immediately follows, very important in a contrary sense to the object. This clause secures us from paying higher duties in India on articles imported and exported in our vessels than are paid on the same articles in British vessels; whereas before they might have imposed at pleasure higher duties on our cargoes, and very reasonably could have gone so far as to countervail the higher duties which we lay on foreign vessels bringing goods from India.

In fine this article is all on one side, and favorable to us.

Article XIV.—This article is a general formula without any special or remarkable feature.

Article XV.—This article, with more precision than is usual, only establishes reciprocally the rule of the most favored nation. It stipulates that as to the

points enumerated, Great Britain shall be on no worse footing than other nations, but it gives her no preferences. It was impossible to expect that a treaty could be formed of which this was not the basis.

The last clause but one assures to Great Britain the right of imposing on American vessels *entering into her ports in Europe*, and their *cargoes*, duties which shall countervail the differences made in our ports between British and American vessels and their cargoes. This right Great Britain enjoyed before the treaty, and it depended then upon her option, as it does still, to exercise or not to exercise it. And it is now in our option to defeat the reservation if we choose it by equalizing the duties.

The last clause stipulates on our side a continuance of the *status quo* as to the tonnage duty on British vessels, and as to the proportional difference of duties on articles imported in British and American vessels. This *status quo* is such as we have no interest to vary, unless on the plan of *coercive regulations*, an idea which is certainly incompatible with the being of the treaty *while it continues in force*.

Article XVI.—This article merely relates to consuls, and is on the common and a harmless footing.

Article XVII.—This article, recognizing the right of a belligerent nation to take its *enemy's goods* out of a neutral vessel, establishes the usual grounds against abuse.

It is impossible to deny that the principle recognized is conformable with the laws of nations. It is the uniform doctrine of writers, and was the uni-

form and universally allowed practice of nations before the armed neutrality brought it into controversy. A combination like this, formed in the midst of a war of temporary duration, and on special motives of policy, not acceded to by all the powers of Europe, not having acquired the sanction of time, is clearly not sufficient to alter a rule in the law of nations. This might be done by common consent, or by long and general usage. Neither is the case here. On the contrary, some of the powers which combined to introduce the innovation, now support in arms a contrary principle; and all the neutral powers — the United States included — have expressly or virtually relinquished the ground in the whole course of the present war. None, that I know of, has seriously contended for it, even in argument.

Our government, at an early day, on full and mature examination and reflection, by an unanimous opinion of those consulted, gave up the ground as untenable. The President's files of Mr. Jefferson's letters are evidence of this. Indeed it is not very probable that the new principle will ever become an established one of the laws of nations. It is too contrary to the spirit of war.

Where, therefore, the rule exists, it must depend on treaty, and apply only to the powers who are parties to it.

This article, therefore, does no more than was done before, and rightly and wisely done.

For besides that one or a few nations cannot justly make and attempt to enforce a new principle, it is

folly in a young and weak country like ours to take a ground which cannot clearly be maintained on precedent and principle.

The dilemma was to renounce the pretension, or to insist upon and maintain it. To have attempted the last would have been madness.

It were to have been wished that this article had stipulated, with regard to contraband goods, what has been stipulated with regard to enemy's goods, to wit, that the contraband only should be detained—the rest of the cargo liberated; since it is contended, *in certain cases*, that the contraband articles will infect the ship and the residue of the cargo. But though such a stipulation would have been a *point gained*, the want of it relinquishes nothing. The point is left where it was before—to the decision of the laws of nations.

Article XVIII.—The first clause of this article specifies the articles to be deemed generally contraband. This specification agrees with the laws of nations, as laid down by writers, and sanctioned by long practice, in all cases in which there are not limitations or exceptions in particular treaties.

The enumeration, however, comprises articles as contraband which are excepted in our other treaties, and is so far less well than might be wished, though probably as well as circumstances would permit to be done at the present juncture.

In embracing generally articles for ship-building, it affects some of the staples of some of the States; but it is to be observed that it only leaves them, in this respect, where they are at present. It is, how-

ever, our interest to narrow upon all occasions as much as possible the list of contraband.

The second clause recites the difficulty of agreeing on the precise cases in which alone provisions and other articles not generally contraband may be regarded as such; to prevent inconvenience and misunderstandings, provides, that in the cases in which, *by the existing laws of nations*, they do become contraband, they shall not be confiscated; but, being taken, *shall be paid* for at their full value, with a reasonable mercantile profit, freight, and demurrage.

But one case in which such articles may be deemed contraband is, by the succeeding clause, subjected to a particular and different regulation. A vessel with her cargo, going to a port or place blockaded, besieged, or invested, if without notice, cannot be seized or detained, but must be turned back. If she contumaciously persists, and makes a second attempt, she may then be seized, and she and her cargo confiscated.

The last sentence guards our property found in places afterwards besieged, etc., from vexations and depredations to which they have been in some cases liable.

The second clause has been the subject of much censure, as though it sanctioned generally the seizing of provisions and other articles not generally contraband, on the condition of paying for them; for it is said that all the cases in which the acknowledged laws of nations authorize such seizure, are differently provided for in the third clause (those of blockades, sieges, and investments), and that consequently the

provision in the second must be understood virtually to admit that there are other cases, and must be referred to the general position set up and acted upon by Great Britain in her order of June.

But this argument is erroneous in principle and in fact.

1. The cases in which articles not generally contraband may be seized, even with compensation, are expressly those in which "they become contraband *according to the existing laws of nations.*" The appeal is then to these laws, as the criterion; and the government will be as free after the treaty as before it, to deny any arbitrary construction which Great Britain may think fit to put upon these laws, and to maintain its opposition in all the ways it may think fit.

2. It is not true that the third clause provides for all the cases where the acknowledged laws of nations authorize seizure of such articles. It provides for only one single case—that of a vessel going *without notice* to a place blockaded, besieged, or invested. The case of a vessel going to such a place *with notice* is not included. Other cases in which provisions, etc., may be properly contraband may be conceived. That of carrying them with the direct intent of supplying a besieging army in the act of carrying on the siege, is one; for there is no reason why the party besieged should not intercept and seize supplies going to the besiegers, as well as the latter those which are destined for the besieged.

Various combinations of circumstances, which do not at first sight occur, may beget other cases in which the seizure may be justified.

The clause in question, then, speaks simply this language: that inasmuch as cases may exist, in which provisions and other articles not generally contraband become so; as it is difficult beforehand to define them, as even in the admitted cases of blockades, sieges, and investments, it may not always be easy to pronounce what is a blockade, siege, or investment; as the parties cannot at this time agree upon a definition of the doubtful cases, they agree at least (with one exception, which has been noticed) that in all cases of the seizure of such articles as contraband, full compensation shall be made, to the end that in *doubtful cases*, the inconvenience being thereby much lessened, the danger of rupture may be diminished by inclining the party which conceives itself injured to acquiesce in the pecuniary compensation.

But though I have no doubt that this is the true and genuine sense of the clause, and that it does by no means warrant the construction put upon it, yet as it may possibly become the pretext of abuses on the side of Great Britain, and of complaint on that of France, I should have liked the treaty better without it. On the whole, I think this article the worst in the treaty, except the 12th, though not defective enough to be an objection to its adoption.

Articles XIX. and XX.—These articles require no comment. They are usual and every way unexceptionable provisions.

Article XXI.—This article is liable to no just objection. The first part of it restrains generally the citizens of each party from participating in hostilities against the other. This is implied in the leading

article of every treaty of peace, is conformable with every moral idea, and though more comprehensive in the extent of the inhibition, is agreeable to the principle of the law of Congress on this subject.

It is also agreeable to the true policy of the United States, which is, to keep its citizens as much as possible from being implicated in the quarrels and contests of other nations, in foreign feelings, interests, and prejudices. This is an idea of great importance to our security in various ways. The only case, if at all, in which it can be our interest that our citizens should engage in foreign service, is that of young men of education entering into foreign service to acquire military knowledge and experience.

But it is conceived that the doing of this in time of peace is not forbidden. The citizens of each party are not to accept commissions from, nor to be permitted to be enlisted by, the *enemies* of the other. This seems to suppose a state of war when the forbidden act is done. The punishment for infractions of this part of the article is referred to the laws of the party whose citizens commit them. No precise one is defined.

The latter part of the clause subjects to the penalties of piracy the citizens of one party accepting commissions from the enemy of the other for *arming any vessel to act as a privateer.*

A similar provision is to be found in all our commercial treaties heretofore made, and is familiar in the commercial treaties of other powers during the present century. It has wisely become the policy of nations to confine the mischievous practice of pri-

vateering to the belligerent parties. This is peculiarly our true policy; as from situation the contrary would never fail to compromise our peace.

It is to be observed that this crime of piracy does not extend to land service, nor to service on board of public ships of war, commonly called men-of-war.

Article XXII.—This is a reasonable and usual provision in affirmance of the laws of nations, and calculated to prevent war.

Article XXIII.—This article merely stipulates those rights of hospitality which the courtesy and humanity of nations owe to each other, and which it has been the endeavor of our government to observe. It does not extend to privateers, which are never denominated ships of war, and consequently does not interfere with our treaty with France as hitherto interpreted and acted upon.

Articles XXIV. and XXV.—These articles, which are compatible with the rules of neutrality and the rights of belligerent nations, are becoming formulas in most modern treaties. They are to be found essentially in our treaties with France, Sweden, and partly if not wholly in that with Prussia, and in the treaty of 1786 between France and Great Britain. They stipulate:

1. That the enemies of one party shall not arm their privateers in the ports of the other.

2. That they shall not sell their prizes there.

3. That they shall not be allowed to purchase more provisions than are sufficient to carry them to the nearest port of the prince or state to which they belong.

4. That the ships of war or privateers of the two contracting parties may carry whithersoever they please the prizes made of their respective enemies, without being obliged on entering the ports of each other to pay fees, or being detained or seized or subject to search, except to prevent infractions of the laws of revenue, navigation, and commerce, or having cognizance taken of the validity of their prizes, and with free liberty to depart to the places mentioned in their commissions, which they are to show.

5. That no shelter or refuge shall be given to such as have made prizes of each other's ships or vessels, but if forced by stress of weather to enter, their departure is to be hastened.

6. That while the parties continue in amity, they will make no future treaty inconsistent with these *two articles*. But there is this *express proviso*, that *nothing in the treaty* shall be construed or operate contrary to *former and existing public treaties with other sovereigns or states*.

Hence, while on the one hand these articles make no unreasonable stipulations in favor of Great Britain, they can by no possibility interfere with prior stipulations to France or any other power. If, consequently, there is any repugnancy, the treaty with Great Britain must give way to those prior treaties. There is only one particular in the conduct hitherto observed towards France in which the treaty with Great Britain will produce an alteration—that is, *the selling of prizes in our ports;* because this indulgence has been granted not upon the ground of any obligation to do it to be found in our treaty with

France, but upon that of there being no law of the United States against it. The XXIVth article of the present treaty will be a law against it, and will restrain it.

But nothing can be more proper; and I well remember, that when it was concluded to permit the selling of prizes, it was unanimously regretted that the Executive, for want of law, could not do otherwise: because the measure had an unneutral aspect, permitting to one party a *military advantage* which our treaty with that party did not leave us at liberty to extend to the other; and was of very questionable propriety. The permission was of a nature to give much dissatisfaction to the other powers. A revocation of it, therefore, by a treaty with one of those powers, is unexceptionably equitable. The clause which restrains the making of future treaties in the given case, has been grossly misunderstood. It is expressly confined to the two articles, and, for aught I see, is nugatory. For a treaty implies of itself, that while the contracting parties remain in amity, they shall make no subsequent treaty inconsistent with the prior one between those parties.

Articles XXVI. and XXVII.—These articles need no particular comment. They are liberal and equitable, and interfere with no interest or duty. The part which regards ambassadors and ministers, is calculated to avoid very delicate embarrassments, and to exclude intrigues and bad conduct in foreign ministers. It would be a valuable article in all our treaties.

Article XXVIII.—The effect of this article is to

enable either party in two years after the termination of the existing European war, to put an end to all the articles of the treaty except the first ten.

This, upon the whole, is a desirable ingredient. It makes the commercial part of the treaty a mere experiment of short duration, and enables each party, if any part of it should be found to work amiss, or if it thinks that upon the whole the treaty is not sufficiently advantageous, to put an end to it unless the parts not satisfactory can be amended, or the additional provisions which are desired can be agreed upon.

Article XXIX.—This, which is the last article, provides merely for the ratification, and looks to future negotiations for more beneficial arrangements.

To these particular views of the different articles of the treaty, the following general views may be added.

The truly important side of this treaty is, that it closes, and upon the whole as reasonably as could have been expected, the controverted points between the two countries; and thereby gives us the prospect of repossessing our Western posts, an object of primary consequence in our affairs, of escaping finally from being implicated in the dreadful war which is ruining Europe, and of preserving ourselves in a state of peace for a considerable time to come.

Well considered, the greatest interest of this country in its external relations, is that of peace. The more or less of commercial advantages which we may acquire by particular treaties, are of far less

moment. With peace, the force of circumstances will enable us to make our way sufficiently fast in trade. War, at this time, would give a serious wound to our growth and prosperity. Can we escape it for ten or twelve years more, we may then meet it without much inquietude, and may advance and support with energy and effect any just pretensions to greater commercial advantages than we may enjoy.

It follows that the objects contained in the permanent articles are of real and great value to us. The price they will cost us in the article of compensation for the debts, is not likely to bear any proportion to the expenses of a single campaign to enforce our rights. The calculation is therefore a simple and a plain one. The terms are no way inconsistent with national honor. As to the commercial arrangements in the temporary articles, they can be of no great importance either way; if it were only for the circumstance that it is in the power of either party to terminate them within two years after the war. So short a duration renders them unimportant, however considered as to intrinsic merit.

Intrinsically considered, they have no very positive character of advantage or disadvantage. They will in all probability leave the trade between the two countries where it at present is.

*Supplementary Remarks*

There is, however, one material circumstance in which this will not happen. The XVth article

declares that there shall be no prohibition of the importation or exportation to and from the respective territories of the contracting parties, which shall not equally extend to all other nations. This permits us to carry to the British dominions any article the growth or manufacture of another country, which may be carried from such country to those dominions. This is a serious innovation on the British navigation act, and an important privilege to us.

It is to be remarked, however, that it does not secure to us the continuance of these discriminations in our favor, compared with foreign powers, which have in practice existed; but as these discriminations have always been revocable at the pleasure of the other party, and are evidently founded on the interest that party has to procure the supply from us, rather than from other quarters, the inference is that the security for the continuance of the advantage is as great as before.

The obstacle to its becoming matter of stipulation was, that it was deemed to be inconsistent with treaties with other powers.

Comparing this treaty with the commercial treaties heretofore entered into by the United States, the real advantage is on the side of the former.

As to the European dominions of the different powers, the footing will be essentially equal.

As to their colonies, Great Britain gives us greater advantages *by this treaty*, than any other nation having colonies *by its treaty*. There is nothing in any of our other treaties equivalent to the advantages granted to us in the British East Indies. To

this may be added the advantages contained in the Canada article.

Against this may be set the stipulation that free ships shall make free goods; and the extended enumeration of contraband; but besides that these are provisions relative to a state of war, our experience in the present war, in reference to France, has shown us that the advantages expected are not to be counted upon.

Since, then, the permanent articles are of material consequence, the temporary ones of small importance; since our faith is preserved with other powers; since there are no improper concessions on our part, but rather more is gained than given, it follows that it is the interest of the United States that the treaty should go into effect.

But will it give no umbrage to France?

It cannot do it, unless France is unreasonable; because our engagements with her remain unimpaired, and because she will still be upon as good a footing as Great Britain. We are in a deplorable situation if we cannot secure our peace, and promote our own interests, by means which not only do not derogate from our faith, but which leave the same advantages to France as to other powers with whom we form treaties. Equality is all that can be claimed from us. It is improbable that France will take umbrage, because there is no cause given for it, because there is no disposition on her part to break with us, and because her situation forbids a breach.

But will it not hinder us from making a more beneficial treaty with France?

This can only turn upon the question of equivalents to be given by us.

As to this, though our treaty with England would prevent in many particulars our giving preferences to France, yet there are still important points, from the natural relations of commerce, which are open to arrangements beneficial to France, and which might serve as equivalents.

There is not leisure to enter into the detail, or this might be shown. It may, however, be mentioned, by way of example, that we may lower, or remove wholly, the duties on French wines, which would be one important item.

But it would be very unwise to refrain from doing with one power, a thing which it was our interest to do, because there was a *possibility* that some other power might be willing to make a better bargain with us.

What evidence has France given that she is disposed to make such better bargain? All that she has hitherto proffered under her present government, has contemplated as the consideration *our becoming parties to the war.* As she will and ought to calculate her own interest, we ought to dismiss the expectation of peculiar favors. Favors, indeed, in trade, are very absurd, and generally imaginary things. Let it be remembered, too, that the short necessary duration of our treaty leaves us a wide field future and not remote. But, upon the whole, we shall be least likely to be deceived, by taking this as the basis of our commercial system, that we are not to make particular sacrifices to, nor expect particular favors from, any power.

It is conceived, therefore, upon the whole, to be the true interest of the United States, to close the present treaty with Great Britain in the manner advised by the Senate.

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## HORATIUS [1]

May, 1795.

*To the People of the United States:*

COUNTRYMEN AND FELLOW-CITIZENS:—Nothing can be more false or ridiculous, justly considered, than the assertion that great sacrifices of your interests are made in the treaty with Great Britain.

As to the controverted points between the two nations, the treaty provides satisfactorily for the great and essential ones; and only foregoes objects of an inferior and disputable nature, of no real consequence to the permanent welfare of the country. As to trade, the dilemma is this: if an article is added for granting us such privileges in the British West Indies as are satisfactory to us, it will give a duration of TWELVE years to the treaty, and will render it as good a one as the most sanguine could desire, and a better one than any other power of Europe *can* make with us; for no other power in Europe can give us the advantages in the East Indies which this treaty confers.

If that article be not added, the commercial part

[1] The strongly hostile feeling in regard to the Jay treaty produced immediate agitation against it in all parts of the country. Hamilton, anxious to check the current and divert it at the beginning, published this appeal signed "Horatius."

of the treaty will expire in TWO years after the present war, by its own limitation.

It is therefore preposterous to talk of great sacrifices in a commercial sense. This observation is to be understood with the exception of the third article; which regulates the trade between us and the neighboring British territories, which is permanent, and which is certainly a precious article; inevitably throwing into our lap the greatest part of the fur trade, with the trade of the two *Canadas*. This is a full answer to the idle tale of sacrifices by the treaty, as the pretext for violating your Constitution, and for sullying your faith and your honor.

It is an unquestionable truth, fellow-citizens, one which it is essential you should understand, that the great and cardinal *sin* of the treaty in the eyes of its adversaries is, that it puts an end to controversy with Great Britain.

We have a sect of politicians among us, who, influenced by a servile and degrading subserviency to the views of France, have adopted it as a fundamental tenet, that there ought to subsist between us and Great Britain, eternal variance and discord.

What we now see is a part of the same system which led the ministry of Louis XVI. to advise our commissioners for making peace to treat with Great Britain without the acknowledgment of our independence; wishing that the omission of this acknowledgment might perpetuate a jealousy and dread of Great Britain, and occasion a greater necessity for our future dependence on France.

It is a part of the same system which, during our

war with Great Britain, produced a resolution of our public councils, without adequate motive or equivalent, to sacrifice the navigation of the Mississippi to Spain; and which also begat a disposition to abandon our claim to any equal participation in the cod fisheries.

It is a part of the same disgraceful system which fettered our commissioners for making peace with the impolitic and humiliating instruction to submit all their motions to the direction of the French Cabinet, and which attempted a censure upon them for breaking through that system, and in consequence of it effecting a peace, glorious and advantageous for this country beyond expectation.

The present rulers of France proclaimed to the world the insidious and unfriendly policy of the former government towards this country. Their successors may hereafter unmask equally insidious and unfriendly views in the present rulers.

But if you are as discerning as I believe you to be, you will not wait for this evidence to form your opinion. You will see in the conduct of the agents of that government, wherever they are, that they are machinating against your independence, peace, and happiness; that not content with a fair competition in your trade, on terms of equal privilege, they are laboring to continue you at variance with Great Britain, in order that you may be dependent on France.

This conduct in the known agents of a foreign government is not to be wondered at. It marks the usual and immemorial policy of all the governments of Europe.

But, that any of your countrymen—that men who have been honored with your suffrages—should be the supple instruments of this crooked policy; that they should stoop to nourish and foster this exotic plant, and should exchange the pure and holy love of their own country for a meretricious foreign amour; that they should be willing to sacrifice your interests to their animosity against one foreign nation and their devotion for another, is justly matter of surprise and indignation. No terms of reprobation are too severe for so faithless and so unworthy a conduct.

Reason, religion, philosophy, policy, disavow the spurious and odious doctrine, that we ought to cherish and cultivate enmity with any nation whatever.

In reference to a nation with whom we have such extensive relations of commerce as with Great Britain—to a power so capable, from her maritime strength, of annoying us—it must be the offspring of treachery or extreme folly. If you consult your true interest your motto cannot fail to be: "PEACE and TRADE with ALL NATIONS; beyond our present engagements, POLITICAL CONNECTION with NONE." You ought to spurn from you, as the box of Pandora, the fatal heresy of a close alliance, or in the language of *Genet*, a true *family compact*, with France. This would at once make you a mere satellite of France, and entangle you in all the contests, broils, and wars of Europe.

'T is evident that the controversies of Europe must often grow out of causes and interests foreign to this country. Why then should we, by a close

political connection with any power of Europe, expose our peace and interest, as a matter of course, to all the shocks with which their mad rivalship and wicked ambition so frequently convulse the earth? 'T were insanity to embrace such a system. The avowed and secret partisans of it merit our contempt for their folly, or our execration for their depravity.

HORATIUS.

# CAMILLUS

# CAMILLUS[1]

(From the *Argus*.)

## DEFENCE OF MR. JAY'S TREATY

### NO. I

July 22, 1795.

IT was to have been foreseen, that the treaty which Mr. Jay was charged to negotiate with Great Britain, whenever it should appear, would have to contend with many perverse dispositions and some honest prejudices; that there was no measure in which the government could engage, so little likely to be viewed according to its intrinsic merits—so

[1] The agitation against the Jay treaty grew daily more dangerous, and the attacks on the Administration became more virulent. Hamilton did all he could to stem the tide, but the popular feeling was such that he was actually stoned at a public meeting. Four days later he entered the field in a more formidable manner, by publishing the first of the "Camillus" essays, which were continued throughout the year. Gradually the opposition concentrated their whole fire upon Hamilton, who kept up his chief argument in "Camillus," and replied to his antagonists, driving one after another from the field, as "Philo-Camillus." These last papers of "Philo-Camillus" add nothing to the main body of argument, are in their nature ephemeral, and exhibit only the writer's power of retort. It does not seem necessary to reprint them.

The "Camillus" essays, however, deserve careful study. In a controversial sense they stand first among Hamilton's writings. They did more to check an apparently irresistible popular feeling and turn it the other way, than anything else. They show Hamilton's ability in argument, a masterly handling of the immediate issue, and a pro-

very likely to encounter misconception, jealousy, and unreasonable dislike. For this, many reasons may be assigned.

It is only to know the vanity and vindictiveness of human nature, to be convinced, that while this generation lasts there will always exist among us men irreconcilable to our present national Constitution; embittered in their animosity in proportion to the success of its operations, and the disappointment of their inauspicious predictions. It is a material inference from this, that such men will watch, with lynx's eyes, for opportunities of discrediting the proceedings of the government, and will display a hostile and malignant zeal upon every occasion, where they think there are any prepossessions of the community to favor their enterprises. A treaty with Great Britain was too fruitful an occasion not to call forth all their activity.

It is only to consult the history of nations, to perceive, that every country, at all times, is cursed by the existence of men who, actuated by an irregular ambition, scruple nothing which they imagine will contribute to their own advancement and importance: in monarchies, supple courtiers; in

found knowledge of the question in all its bearings. They also exhibit Hamilton's general theory of our foreign relations, and his wide knowledge of the whole field of international law.

The force and ability of these essays were not lost upon the opposition. It was in this connection that Jefferson wrote that "Hamilton was a Colossus to the Anti-Republican party," and he urged Madison to take the field against their great enemy. Madison, however, had no stomach for the fight, and prudently abstained. Nothing shows more strongly Hamilton's influence upon public opinion than the effects produced by this remarkable series of essays.

republics, fawning or turbulent demagogues, worshipping still the idol—power—wherever placed, whether in the hands of a prince or of the people, and trafficking in the weaknesses, vices, frailties, or prejudices of the one or the other. It was to have been expected that such men, counting more on the passions than on the reason of their fellow-citizens, and anticipating that the treaty would have to struggle with prejudices, would be disposed to make an alliance with popular discontent, to nourish it, and to press it into the service of their particular views.

It was not to have been doubted, that there would be one or more foreign powers indisposed to a measure which accommodated our differences with Great Britain, and laid the foundation of future good understanding, merely because it had that effect.

Nations are never content to confine their rivalships and enmities to themselves. It is their usual policy to disseminate them as widely as they can, regardless how far it may interfere with the tranquillity or happiness of the nations which they are able to influence. Whatever pretensions may be made, the world is yet remote from the spectacle of that just and generous policy, whether in the Cabinets of republics or of kings, which would dispose one nation, in its intercourses with another—satisfied with a due proportion of privileges and benefits—to see that other pursue freely its true interest with regard to a third, though at the expense of no engagement, nor in violation of any rule of

friendly or fair procedure. It was natural that the contrary spirit should produce efforts of foreign counteraction to the treaty; and it was certain that the partisans of the counteracting power would second its efforts by all the means which they thought calculated to answer the end.

It was known, that the resentment produced by our revolution war with Great Britain had never been entirely extinguished, and that recent injuries had rekindled the flame with additional violence. It was a natural consequence of this, that many should be disinclined to any amicable arrangement with Great Britain, and that many others should be prepared to acquiesce only in a treaty which should present advantages of so striking and preponderant a kind as it was not reasonable to expect could be obtained, unless the United States were in a condition to give the law to Great Britain, and as, if obtained under the coercion of such a situation, could only have been the short-lived prelude of a speedy rupture to get rid of them.

Unfortunately, too, the supposition of that situation has served to foster exaggerated expectations; and the absurd delusion to this moment prevails, notwithstanding the plain evidence to the contrary, which is deducible from the high and haughty ground still maintained by Great Britain against victorious France.

It was not to be mistaken, that an enthusiasm for France and her revolution, throughout all its wonderful vicissitudes, has continued to possess the minds of the great body of the people of this country;

and it was to be inferred, that this sentiment would predispose to a jealousy of any agreement or treaty with her most persevering competitor,—a jealousy so excessive, as would give the fullest scope to insidious arts to perplex and mislead the public opinion. It was well understood, that a numerous party among us, though disavowing the design, because the avowal would defeat it, have been steadily endeavoring to make the United States a party in the present European war, by advocating all those measures which would widen the breach between us and Great Britain, and by resisting all those which would tend to close it; and it was morally certain, that this party would eagerly improve every circumstance which would serve to render the treaty odious, and to frustrate it, as the most effectual road to their favorite goal.

It was also known beforehand, that personal and party rivalships, of the most active kind, would assail whatever treaty might be made, to disgrace, if possible, its organ.

There are three persons prominent in the public eye, as the successor of the actual President of the United States, in the event of his retreat from the station—Mr. Adams, Mr. Jay, and Mr. Jefferson.

No one has forgotten the systematic pains which have been taken to impair the well-earned popularity of the first gentleman. Mr. Jay, too, has been repeatedly the object of attacks with the same view. His friends, as well as his enemies, anticipated that he could make no treaty which would not furnish weapons against him; and it were to have been

ignorant of the indefatigable malice of his adversaries, to have doubted that they would be seized with eagerness and wielded with dexterity.

The peculiar circumstances which have attended the two last elections for governor of this State,[1] have been of a nature to give the utmost keenness to party animosity. It was impossible that Mr. Jay should be forgiven for his double, and in the last instance triumphant, success; or that any promising opportunity of detaching from him the public confidence, should pass unimproved.

Trivial facts frequently throw light upon important designs. It is remarkable, that in the toasts given on the 4th of July, wherever there appears a direct or indirect censure of the treaty, it is pretty uniformly coupled with compliments to Mr. Jefferson, and to our late governor, Mr. Clinton, with an evident design to place those gentleman in contrast with Mr. Jay, and, decrying him, to elevate them. No one can be blind to the finger of party spirit, visible in these and similar transactions. It indicates to us clearly one powerful source of opposition to the treaty.

No man is without his personal enemies. Pre-eminence even in talents and virtue is a cause of envy and hatred of its possessor. Bad men are the natural enemies of virtuous men. Good men sometimes mistake and dislike each other.

Upon such an occasion as the treaty, how could it happen otherwise, than that *personal enmity* would be unusually busy, enterprising, and malignant?

[1] New York.

From the combined operations of these different causes, it would have been a vain expectation that the treaty would be generally contemplated with candor and moderation, or that reason would regulate the first impressions concerning it. It was certain, on the contrary, that however unexceptionable its true character might be, it would have to fight its way through a mass of unreasonable opposition; and that time, examination, and reflection would be requisite to fix the public opinion on a true basis. It was certain that it would become the instrument of a systematic effort against the national government and its administration; a decided engine of party to advance its own views at the hazard of the public peace and prosperity.

The events which have already taken place are a full comment on these positions. If the good sense of the people does not speedily discountenance the projects which are on foot, more melancholy proofs may succeed.

Before the treaty was known, attempts were made to prepossess the public mind against it. It was absurdly asserted, that it was not expected by the people that Mr. Jay was to make any treaty; as if he had been sent, not to accommodate differences by negotiation and agreement, but to dictate to Great Britain the terms of an unconditional submission.

Before it was published at large, a sketch, calculated to produce false impressions, was handed out to the public, through a medium noted for hostility to the administration of the government.

Emissaries flew through the country, spreading alarm and discontent; the leaders of clubs were everywhere active to seize the passions of the people, and preoccupy their judgments against the treaty.

At Boston it was published one day, and the next a town-meeting was convened to condemn it; without ever being read, without any serious discussion, sentence was pronounced against it.

Will any man seriously believe, that in so short a time an instrument of this nature could have been tolerably understood by the greater part of those who were thus induced to a condemnation of it? Can the result be considered as any thing more than a sudden ebullition of popular passion, excited by the artifices of a party which had adroitly seized a favorable moment to furorize the public opinion? This spirit of precipitation and the intemperance which accompanied it, prevented the body of the merchants and the greater part of the most considerate citizens from attending the meeting, and left those who met, wholly under the guidance of a set of men, who with two or three exceptions, have been the uniform opposers of the government.

The intelligence of this event had no sooner reached New York than the leaders of the clubs were seen haranguing in every corner of the city, to stir up our citizens into an imitation of the example of the meeting at Boston. An invitation to meet at the City Hall quickly followed, not to consider or discuss the merits of the treaty, but to unite with the meeting at Boston to address the President against its ratification.

This was immediately succeeded by a hand-bill, full of invectives against the treaty, as absurd as they were inflammatory, and manifestly designed to induce the citizens to surrender their reason to the empire of their passions.

In vain did a respectable meeting of the merchants endeavor, by their advice, to moderate the violence of these views, and to promote a spirit favorable to a fair discussion of the treaty; in vain did a respectable majority of the citizens of every description attend for that purpose. The leaders of the clubs resisted all discussion, and their followers, by their clamors and vociferations, rendered it impracticable, notwithstanding the wish of a manifest majority of the citizens convened upon the occasion.

Can we believe that the leaders were really sincere in the objections they made to a discussion, or that the great and mixed mass of citizens then assembled had so thoroughly mastered the merits of the treaty as that they might not have been enlightened by such a discussion?

It cannot be doubted that the real motive to the opposition was the fear of a discussion; the desire of excluding light; the adherence to a plan of surprise and deception. Nor need we desire any fuller proof of the spirit of party which has stimulated the opposition to the treaty, than is to be found in the circumstances of that opposition.

To every man who is not an enemy to the national government, who is not a prejudiced partisan, who is capable of comprehending the argument, and dispassionate enough to attend to it with impartiality,

I flatter myself I shall be able to demonstrate satisfactorily in the course of some succeeding papers:

1. That the treaty adjusts, in a reasonable manner, the points in controversy between the United States and Great Britain, as well those depending on the inexecution of the treaty of peace, as those growing out of the present European war.

2. That it makes no improper concessions to Great Britain, no sacrifices on the part of the United States.

3. That it secures to the United States equivalents for what they grant.

4. That it lays upon them no restrictions which are incompatible with their honor or their interest.

5. That in the articles which respect war, it conforms to the laws of nations.

6. That it violates no treaty with, nor duty towards, any foreign power.

7. That, compared with our other commercial treaties, it is, upon the whole entitled to a preference.

8. That it contains concessions of advantages by Great Britain to the United States, which no other nation has obtained from the same power.

9. That it gives to her no superiority of advantages over other nations with whom we have treaties.

10. That the interests of primary importance to our general welfare are promoted by it.

11. That the too probable result of a refusal to ratify is war, or, what would be still worse, a disgraceful passiveness under violations of our rights, unredressed, and unadjusted; and consequently that it is the true interest of the United States that the treaty should go into effect.

It will be understood that I speak of the treaty as advised to be ratified by the Senate—for this is the true question before the public.

CAMILLUS.

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NO. II

1795.

Previous to a more particular discussion of the merits of the treaty, it may be useful to advert to a suggestion which has been thrown out, namely: that it was foreseen by many that the mission to Great Britain would produce no good result, and that the event has corresponded with the anticipation.

The reverse of this position is manifestly true.

All must remember the very critical posture of this country at the time that mission was resolved upon. A recent violation of our rights, too flagrant and too injurious to be submitted to, had filled every American breast with indignation, and every prudent man with alarm and disquietude. A few hoped, and the great body of the community feared, that war was inevitable.

In this crisis two sets of opinions prevailed: one looked to measures which were to have a compulsory effect upon Great Britain, the sequestration of British debts, and the cutting off intercourse wholly or partially between the two countries; the other to *vigorous preparations* for war, and *one more effort* of negotiation, under the solemnity of an extraordinary mission, to avert it.

That the latter was the best opinion, no truly

sensible man can doubt; and it may be boldly affirmed that the event has entirely justified it.

If measures of coercion and reprisal had taken place, war, in all human probability, would have followed.

National pride is generally a very untractable thing. In the councils of no country does it act with greater force than in those of Great Britain. Whatever it might have been in her power to yield to negotiation, she could have yielded nothing to compulsion, without self-degradation, and without the sacrifice of that political consequence which, at all times very important to a nation, was peculiarly so to her at the juncture in question. It should be remembered, too, that from the relations in which the two countries have stood to each other, it must have cost more to the pride of Great Britain to have received the law from us than from any other power.

When one nation has cause of complaint against another, the course marked out by practice, the opinion of writers, and the principles of humanity, the object being to avoid war, is to precede reprisals of any kind by a demand of reparation. To begin with reprisals is to meet on the ground of war, and put the other party in a condition not to be able to recede without humiliation.

Had this course been pursued by us, it would not only have rendered war morally certain, but it would have united the British nation in a vigorous support of their government in the prosecution of it; while, on our part, we should have been quickly distracted and divided. The calamities of war would have

brought the most ardent to their senses, and placed them among the first in reproaching the government with precipitation, rashness, and folly for not having taken every chance, by pacific means, to avoid so great an evil.

The example of Denmark and Sweden is cited in support of the coercive plan. Those powers, it is asserted, by arming and acting with vigor, brought Great Britain to terms.

But who is able to tell us the precise course of this transaction, or the terms gained by it? Has it appeared that either Denmark or Sweden has obtained as much as we have done—a stipulation of reparation for the violation of our property, contrary to the laws of war?

Besides, what did Denmark and Sweden do? They armed, and they negotiated. They did not begin by retaliations and reprisals. The United States also armed and negotiated, and, like Denmark and Sweden, prudently forbore reprisals. The conduct of the three countries agreed in principle, equally steering clear of a precipitate resort to reprisals, and contradicting the doctrines and advice of our war party.

The course pursued by our government was, then, in coincidence with the example of Denmark and Sweden—and, it may be added, was in every view the wisest.

Few nations can have stronger inducements than the United States to cultivate peace. Their infant state in general, their want of a marine in particular, to protect their commerce, would render war, in

an extreme degree, a calamity. It would not only arrest our present rapid progress to strength and prosperity, but would probably throw us back into a state of debility and impoverishment, from which it would require years to emerge.

Our trade, navigation, and mercantile capital would be essentially destroyed. Spain being an associate of Great Britain, a general Indian war might be expected to desolate the whole extent of our frontier; our exports obstructed, agriculture would of course languish; all other branches of industry would proportionately suffer; our public debt, instead of a gradual diminution, would sustain a great augmentation, and draw with it a large increase of taxes and burthens on the people.

But these evils, however great, were, perhaps, not the worst to be apprehended. It was to be feared that the war would be conducted in a spirit which would render it more than ordinarily calamitous. There are too many proofs that a considerable party among us is deeply infected with those horrid principles of Jacobinism which, proceeding from one excess to another, have made France a theatre of blood, and which, notwithstanding the most vigorous efforts of the national representation to suppress it, keeps the destinies of France, to this moment, suspended by a thread. It was too probable, that the direction of the war, if commenced, would have fallen into the hands of men of this description. The consequences of this, even in imagination, are such as to make any virtuous man shudder.

It was, therefore, in a peculiar manner, the duty

of the government to take all possible chances for avoiding war. The plan adopted was the only one which could claim this advantage.

To precipitate nothing, to gain time by negotiations, was to leave the country in a situation to profit by any events which might turn up, tending to restrain a spirit of hostility to Great Britain, and to dispose her to reasonable accommodation.

The successes of France, which opportunely occurred, allowing them to have had an influence upon the issue, so far from disparaging the merit of the plan that was pursued, serve to illustrate its wisdom. This was one of the chances which procrastination gave, and one which it was natural to take into the calculation.

Had the reverse been the case, the posture of negotiation was still preferable to that of retaliation and reprisal; for in this case, the triumphs of Great Britain, the gauntlet having been thrown by us, would have stimulated her to take it up without hesitation.

By taking the ground of negotiation in the attitude of preparation for war, we at the same time carried the appeal to the prudence of the British Cabinet, without wounding its pride, and to the justice and interest of the British nation, without exciting feelings of resentment.

This conduct was calculated to range the public opinion of that country on our side, to oppose it to the indulgence of hostile views in the Cabinet, and, in case of war, to lay the foundation of schism and dissatisfaction.

But one of the most important advantages to be expected from the course pursued, was the securing of unanimity among ourselves, if, after all the pain taken to avoid the war, it had been forced upon us.

As, on the one hand, it was certain that dissension and discontent would have embarrassed and enfeebled our exertions, in a war produced by any circumstances of intemperance in our public councils, or not endeavored to be prevented by all the milder expedients usual in similar cases; so, on the other, it was equally certain that our having effectually exhausted those expedients would cement us in a firm mass, keep us steady and persevering amidst whatever vicissitudes might happen, and nerve our efforts to the utmost extent of our resources.

This union among ourselves and disunion among our enemies were inestimable effects of the moderate plan, if it had promised no other advantage.

But to gain the time was of vast moment to us in other senses. Not a seaport of the United States was fortified, so as to be protected against the insults of a single frigate. Our magazines were, in every respect, too scantily supplied. It was highly desirable to obviate these deficiencies before matters came to extremity.

Moreover, the longer we kept out of war, if obliged to go into it at last, the shorter would be the duration of the calamities incident to it.

The circumstances of the injury of which we more immediately complain afforded an additional reason for preceding reprisals by negotiation. The order of the 6th of November directed neutral vessels to be

brought in for *adjudication*. This was an equivocal phrase; and though there was too much cause to suspect that it was intended to operate as it did, yet there was a possibility of misconstruction; and that possibility was a reason, in the nature of the thing, for giving the English Government an opportunity of explaining before retaliations took place.

To all this it may be added, that one of the substitutes for the plan pursued, the sequestration of debts, was a measure no less dishonest than impolitic; as will be shown in the remarks which will be applied to the 10th article of the treaty.

But is it unimportant to the real friends of republican government, that the plan pursued was congenial to the public character which is ascribed to it? Would it have been more desirable that the government of our nation, outstripping the war maxims of Europe, should, without a previous demand of reparation, have rushed into reprisals, and consequently into a war?

However this may be, it is a well-ascertained fact, that our country never appeared so august and respectable as in the position which it assumed upon this occasion. Europe was struck with the dignified moderation of our conduct; and the character of our government and nation acquired a new elevation.

It cannot escape an attentive observer, that the language which, in the first instance, condemned the mission of an Envoy Extraordinary to Great Britain, and which now condemns the treaty negotiated by him, seems to consider the United States as among the first-rate powers of the world in point of strength

and resources, and proposes to them a conduct predicated upon that condition.

To underrate our just importance would be a degrading error. To overrate it may lead to dangerous mistakes.

A very powerful state may frequently hazard a high and haughty tone with good policy; but a weak state can scarcely ever do it without imprudence. The last is yet our character; though we are the embryo of a great empire. It is, therefore, better suited to our situation to measure each step with the utmost caution; to hazard as little as possible, in the cases in which we are injured; to blend moderation with firmness; and to brandish the weapons of hostility only when it is apparent that the use of them is unavoidable.

It is not to be inferred from this, that we are to crouch to any power on earth, or tamely to suffer our rights to be violated. A nation which is capable of this meanness will quickly have no rights to protect, or honor to defend.

But the true inference is, that we ought not lightly to seek or provoke a resort to arms; that, in the differences between us and other nations, we ought carefully to avoid measures which tend to widen the breach; and that we should scrupulously abstain from whatever may be construed into reprisals, till after the employment of all amicable means has reduced it to a certainty that there is no alternative.

If we can avoid a war for ten or twelve years more, we shall then have acquired a maturity, which will make it no more than a common calamity, and will

authorize us, in our national discussions, to take a higher and more imposing tone.

This is a consideration of the greatest weight to determine us to exert all our prudence and address to keep out of war as long as it shall be possible; to defer, to a state of manhood, a struggle to which infancy is ill adapted. This is the most effectual way to disappoint the enemies of our welfare; to pursue a contrary conduct may be to play into their hands, and to gratify their wishes. If there be a foreign power which sees with envy or ill-will our growing prosperity, that power must discern that our infancy is the time for clipping our wings. We ought to be wise enough to see that this is not a time for trying our strength.

Should we be able to escape the storm which at this juncture agitates Europe, our disputes with Great Britain terminated, we may hope to postpone war to a distant period. This, at least, will greatly diminish the chances of it. For then there will remain only one power with whom we have any embarrassing discussions. I allude to Spain, and the question of the Mississippi; and there is reason to hope that this question, by the natural progress of things, and perseverance in an amicable course, will finally be arranged to our satisfaction without the necessity of the *dernier ressort.*

The allusion to this case suggests one or two important reflections. How unwise would it have been to invite or facilitate a quarrel with Great Britain at a moment when she and Spain were engaged in a common cause, both of them having, besides,

controverted points with the United States! How wise will it be to adjust our differences with the most formidable of these two powers, and to have only to contest with one of them!

This policy is so obvious, that it requires an extraordinary degree of infatuation not to be sensible of it, and not to view with favor any measure which tends to so important a result.

This cursory view of the motives which may be supposed to have governed our public councils in the mission to Great Britain, serves not only to vindicate the measures then pursued, but warns us against a prejudiced judgment of the result, which may, in the end, defeat the salutary purposes of those measures.

I proceed now to observe summarily that the objects of the mission, contrary to what has been asserted, have been substantially obtained. What were these? They were principally:

1. To adjust the matters of controversy concerning the inexecution of the treaty of peace, and especially to obtain restitution of our Western posts.

2. To obtain reparation for the captures and spoliations of our property in the course of the existing war.

Both these objects have been provided for, and it will be shown, when we come to comment upon the articles which make the provisions in each case, that it is a reasonable one, as good a one as ought to have been expected; as good a one as there is any prospect of obtaining hereafter; one which it is consistent with our honor to accept, and which our interest bids us to close with.

The provisions with regard to commerce were incidental and auxiliary. The reasons which may be conceived to have led to the including of the subject in the mission will be discussed in some proper place.

CAMILLUS.

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NO. III

1795.

The opposers of the treaty seem to have put invention on the rack, to accumulate charges against it, in a great number of cases, without regard even to plausibility. If we suppose them sincere, we must often pity their ignorance; if insincere, we must abhor the spirit of deception which it betrays. Of the preposterous nature of some of their charges, specimens will be given in the course of these remarks; though, while nothing which is colorable will remain unattended to, it were endless to attempt a distinct refutation of all the wild and absurd things which are and will be said. It is vain to combat the vagaries of diseased imaginations. The monsters they engender are no sooner destroyed than new legions supply their places. Upon this, as upon all former occasions, the good sense of the people must be relied upon; and it must be taken for granted, that it will be sufficient for their conviction to give solid answers to all such objections as have the semblance of reason; that now, as heretofore, they will maintain their character abroad and at home for deliberation and reflection, and disappoint those who are in the habit of making experiments upon their

credulity, who, treating them as children, fancy that sugar-plums and toys will suffice to gain their confidence and attachment, and to lead them blindfold whithersoever it is desired.

In considering the treaty, it presents itself under two principal heads: the permanent articles, which are the first ten, and which, with some supplementary provisions, adjust the controverted points between the two countries; and the temporary articles, which are all the remaining ones, and which establish the principles of mutual intercourse, as to GENERAL navigation and commerce. The manner of the discussion will correspond with this natural division of the subject.

An objection meets the treaty at the threshold. It is said that our envoy abandoned the ground which our government had uniformly held, and with it our rights and interests as a nation, by acceding, in the preamble of the treaty, to the idea of terminating the differences between the two countries, "*in such a manner as, without reference to the merits of their respective complaints and pretensions, may be best calculated to produce mutual satisfaction and good understanding.*"

It is observed, in support of this, that our government has constantly charged the first breaches of the treaty upon Great Britain, in the two particulars of carrying away the negroes and detaining the posts; that while the evacuation of New York was going on, a demand of the surrender of the negroes was made by Congress, through our commander-in-chief, which not being complied with, commissioners were sent to

ascertain the number carried away, with a view to a claim of compensation; that early and repeated applications were also made for the surrender of the Western posts, which not only was not done, but it is proved by the circumstances that orders were not given for it, according to the true intent of the treaty, and that there was, from the beginning, a design to infract, and a virtual infraction of the article with respect to this object. All this, it is alleged, has been the uniform language of our government, and has been demonstrated by Mr. Jefferson to be true, in his letter to Mr. Hammond, of the 29th of May, 1792; and it is asserted that the ground ought not to have been given up by Mr. Jay, because it was the standard of the mutual rights and duties of the parties, as to the points unexecuted of the treaty of peace.

A proper examination of these matters is therefore called for, not only by the specific objection which is made to the principle which is contained in the preamble, but by the influence which a right solution is calculated to have, in giving a favorable or unfavorable complexion to the whole plan of the adjustment.

It is true, as suggested, that our government has constantly charged as breaches of the treaty by Great Britain, the two particulars which have been stated; but it is believed to be not true, that it has uniformly charged them as FIRST breaches of the treaty. Individuals may have entertained this idea. The State of Virginia seems to have proceeded upon it in some public acts; but as far as is recollected, that ground

was never formally or explicitly taken by the government of the United States until the above-mentioned letter from Mr. Jefferson to Mr. Hammond, when, for the first time, an attempt was made to vindicate or excuse the whole conduct of this country, in regard to the treaty of peace, contrary, I will venture to say, to the general sense of well-informed men.

The most solemn act of our government on this head is an address of Congress to the different States, of the 13th of April, 1787.

This address admits contraventions of the treaty on our part; and instead of deriving either justification or extenuation of them from prior infractions by Great Britain, urges the different States to a repeal of all contravening laws.

But if the fact, in this respect, were admitted to be, as stated by the adversaries of the treaty, it would not authorize their conclusion.

It would not follow, that, because the ground had been taken by the government, it ought to have been pertinaciously kept, if, upon fair examination, it had appeared to be not solid, or if an adherence to it would have obstructed a reasonable adjustment of differences.

Nations, no more than individuals, ought to persist in error, especially at the sacrifice of their peace and prosperity; besides, nothing is more common, in disputes between nations, than each side to charge the other with being the aggressor or delinquent. This mutual crimination, either from the nature of circumstances, or from the illusions of the passions,

is sometimes sincere; at other times it is dictated by pride or policy. But in all such cases, where one party is not powerful enough to dictate to the other, and where there is a mutual disposition to avoid war, the natural retreat for both is in compromise, which waives the question of first aggression or delinquency. This is the salvo for national pride; the escape for mutual error; the bridge by which nations, arrayed against each other, are enabled to retire with honor, and without bloodshed, from the field of contest. In cases of mutual delinquency, the question of the first default is frequently attended with real difficulty and doubt. One side has an equal right with the other to have and maintain its opinion. What is to be done when the pride of neither will yield to the arguments of the other? War, or a waiver of the point, is the alternative. What sensible man, what humane man, will deny that a compromise, which secures substantially the objects of interest, is almost always preferable to war on so punctilious and unmanageable a point?

Reject the principle of compromise, and the feuds of nations must become much more deadly than they have hitherto been. There would scarcely ever be room for the adjustment of differences without an appeal to the sword; and, when drawn, it would seldom be sheathed but with the destruction of one or the other party. The earth, now too often stained, would then continually stream with human gore.

From the situation of the thing, and of the parties, there never could be a rational doubt that the compromising plan was the only one on which the United

States and Great Britain could ever terminate their differences without war; that the question, who was the first delinquent, would have been an eternal bar to accommodation, and consequently, that a dismission of that question was a prerequisite to agreement. Had our envoy permitted the negotiation to be arrested by obstinacy on this head, he would have shown himself to be the diplomatic pedant, rather than the able negotiator, and would have been justly chargeable with sacrificing to punctilio the peace of his country. It was enough for him, as he did, to ascertain, by a preliminary discussion, the impossibility of bringing the other party to concede the point.

An impartial survey of the real state of the question will satisfy candid and discerning men, that it was wise and politic to dismiss it. This shall be attempted.

It has been observed that two breaches of the treaty of peace are charged upon Great Britain: the carrying away of the negroes, and the detention of the posts. It remains to investigate the reality of these breaches, and to fix the periods when they can be said to have happened.

As to the negroes, the true sense of the article in the treaty of peace, which respects them, is disputed.

The words of the stipulation are (Art. 7) that "his Britannic Majesty shall, with all convenient speed, and without *causing any destruction* or *carrying away any negroes* or *other property of the American* inhabitants, withdraw all his armies, garrisons, and fleets from the United States."

These terms admit of two constructions: one, that no negroes, or other articles which *had been* American property, should be carried away; the other, that the evacuations were to be made *without depredation;* consequently, that no new destruction was to be committed, and that negroes, or other articles, which, at the time of the cessation of hostilities, *continued to be* the *property* of American inhabitants, unexchanged by the operations of war, should be forborne to be carried away.

The first was the construction which was adopted by this country; and the last is that insisted upon by Great Britain.

The arguments which support her construction are these:

I.—The established laws of war give to an enemy the *use* and *enjoyment,* during the war, of all *real* property, of which he obtains possession, and the absolute ownership of all personal property which falls into his hands. The latter is called *booty;* and, except ships, becomes vested in the captors the moment they acquire a firm possession. With regard to ships, it seems to be a general rule of the marine law, that condemnation is necessary to complete investment of the property in the captor.

II.—Negroes, by the laws of the States in which slavery is allowed, are personal property. They, therefore, on the principle of those laws, like horses, cattle, and other movables, were liable to become booty, and belonged to the enemy as soon as they came into his hands. Belonging to him, he was free either to apply them to his own use, or set them at

liberty. If he did the latter, the grant was irrevocable, restitution was impossible. Nothing in the laws of nations or in those of Great Britain will authorize the resumption of liberty, once granted to a human being.

III.—The negroes in question were either taken in the course of military operations, or they joined the British army upon invitation by proclamation. However dishonorable to Great Britain the latter may have been, as an illiberal species of warfare, there is no ground to say that the strict rules of war did not warrant it; or that the effect was not, in the one case, as well as in the other, a change of property in the thing.

IV.—The stipulation relates to "negroes or *other property* of the *American* inhabitants"; putting negroes on the same footing with any other article. The characteristic of the subject of the stipulation being *property* of *American* inhabitants, whatever had lost that character could not be the object of the stipulation. But the negroes in question, by the laws of war, had lost that character; they were therefore not within the stipulation.

Why did not the United States demand the surrender of captured vessels, and of all other movables, which had fallen into the hands of the enemy? The answer is, because common sense would have revolted against such a construction. No one could believe that an indefinite surrender of all the spoils or booty of a seven-years' war was ever intended to be stipulated; and yet the demand for a horse, or an ox, or a piece of furniture, would have been as

completely within the terms "negroes and other property," as a negro; consequently, the reasoning which proves that one is not included, excludes the other.

The silence of the United States as to every other article is therefore a virtual abandonment of that sense of the stipulation which requires the surrender of negroes.

V.—In the interpretation of treaties, things *odious* or *immoral* are not to be presumed. The abandonment of negroes, who had been induced to quit their masters on the faith of official proclamation, promising them liberty, to fall again under the yoke of their masters, and into slavery, is as *odious* and *immoral* a thing as can be conceived. It is odious, not only as it imposes an act of perfidy on one of the contracting parties, but as it tends to bring back to servitude men once made free. The general interests of humanity conspire with the obligation which Great Britain had contracted towards the negroes, to repel this construction of the treaty, if another can be found.

VI.—But another and a less exceptionable construction is found in considering the clause as inserted, for greater caution, *to secure evacuations without depredation.* It may be answered that this was superfluous, because hostilities having ceased, the stipulation to surrender implied of itself that it was to be done without depredation. But to this the reply is, that a part of the clause manifestly contemplates the case of new depredations, and provides a guard against it, in the promise that the

evacuations shall be made without *causing any destruction.* To cause destruction is to do some new act of violence. This reflection destroys the argument drawn from the superfluousness of the stipulation in the sense here given to it, and by showing that it must have such a sense in one part, authorizes the conclusion, that the remainder of the clause has a similar sense. The connection of the two things, in parts of one sentence, confirms this inference.

These arguments certainly have great weight, and do not admit of easy refutation. It is a fact, too, that the opinions of some of the ablest lawyers of our own country have, from the beginning, corresponded with the construction they enforce.

It is not enough for us to be persuaded, that some of the negotiators, who made the peace, intended the article in our sense. It is necessary that it should be found in the instrument itself, and, from the nature of it, ought to have been expressed with clearness and without ambiguity. If there be real ambiguity in such a case, the odiousness of the effect will incline the scale against us.

It does not remove the difficulty, to say, that compensation for the negroes might have been a substitute for the thing. When one party promises a specific thing to another, nothing but the thing itself will satisfy the promise. The party to whom it is made cannot be required to accept in lieu of it an equivalent. It follows, that compensation for the negroes would not have been a performance of the stipulation to forbear to carry them away; and therefore, if there be any thing odious in the specific

thing itself, the objection to the interpretation which requires it is not done away by the idea of substituting compensation. For the article does not admit such substitution, and its sense cannot be defined by what it does admit.

Some color to our sense of the article results from these expressions in the same clause, "leaving in all fortifications the *American* artillery that may be therein." But this expression is not of equivalent force to that of *property* of *American inhabitants*. For example, suppose an American ship to have been captured and condemned, it might still be said of her, in a certain sense, this is an "American ship," alluding to the country of which she had been the ship; but it could not be said in any sense of her, this ship is American *property*, or the *property* of American inhabitants. The country of which a thing was, may often be used with aptness as a term of description of that thing, though it may have changed owners; but the term *property*, which is synonymous with *ownership*, can never be used in the present tense as descriptive of an ownership which has ceased. Moreover, if the expressions in the two cases had been (as they are not) of equivalent force, it would not follow that they were to have the same meaning in both cases, being applied to different matters. For an odious consequence in one instance, would be a reason for rejecting a particular sense of a word or phrase, which would be proper in another, to which no such consequence was attached.

Let me now ask this question of any candid man:

Is our construction of the article respecting the negroes so much better supported than that of Great Britain, as to justify our pronouncing with positiveness, that the carrying them away was a breach of the treaty?

To me it appears clear that this must be considered, speaking favorably for us, as a very doubtful point, and that we cannot, with confidence, predicate a breach of the treaty by Great Britain upon this event. If it was one, it happened in May, 1783.

The affair of the Western posts is now to be examined. That the detention of them, after the proper point of time for delivering them up, was a breach of the treaty, will not bear a dispute. But what that proper time was, is a serious question between the two parties.

Our government has contended, that the posts ought to have been surrendered with all convenient speed after the provisional treaty took effect; and Mr. Jefferson, who is much cited on the present occasion, has shown by an ingenious and elaborate deduction of circumstances, that this was not only not done but never intended.

But Mr. Jefferson has not even discussed the question, whether the provisional or the definitive treaty was the act from which the obligation to perform was to date. This is an important omission; for Great Britain affirms the definitive treaty to be the criterion.

As an original question much might be said on both sides. The natural relation of the terms *provisional* or *preliminary* and *definitive*, seems to ex-

hibit the former as inchoate and imperfect, and to refer to the latter the conclusive obligatory force and legal perfection. There is room, therefore, to say, that all but the mere cessation of hostilities, or for the execution of which there is no precise point of time fixed in the preliminary articles, is referred to in the definitive treaty.

On the other hand, it may be argued, that a preliminary treaty is as much a national treaty as a definitive one, both being made by an equal and a competent authority; and that there is no good reason why those things which are sufficiently regulated by the preliminary, should not go into immediate and complete effect, equally as if regulated by the definitive treaty; or why the latter should be considered as any thing more than an instrument for adjusting points which may have been left open by the preliminary articles, and for giving more perfect form. Accordingly, there are examples of preliminary treaties going into mutual and full execution, though never followed by definitive treaties.

But, however this question may have stood on principle, the conduct of our government in the particular case has settled it against us, and has completely sanctioned the doctrine of Great Britain.

If performance was to date from the provisional articles, this applies as well to us as to Great Britain. It was incumbent upon Congress to have notified the treaty, with the proper solemnities, to the different States and their citizens; to have made the recommendations stipulated by the fifth article; and to have enjoined the observance of all those things

which we promised on our part. The nature of some of these stipulations rendered it particularly urgent that no time should be lost. But all was deferred till the ratification in this country of the definitive treaty. The 15th of January, 1784, is the date of the act which attempts to carry the treaty into effect on our part. This then is a practical settlement by ourselves of the principle, that performance was to date from the definitive treaty.

It is no objection to the position, that our seaports were previously evacuated. That was matter of mutual convenience; and though done, does not change the state of *strict obligation* between the parties. Even in the view of liberal and conciliating procedure, the prompt surrender of our seaports is, for obvious reasons, a very different thing.

But our dilemma is this, if the delay of orders for evacuating the Western posts, previous to the ratification of the definitive treaty, was, on the part of Great Britain, a breach of treaty, our delay to act upon the points stipulated by us, till after that ratification, must have been equally a breach of treaty; and it must have been at least contemporary with any breach that could have been committed by Great Britain.

We are compelled, then, by our own example to agree with Great Britain, that she was not obliged to surrender the Western posts till after the mutual ratification of the definitive treaty, and to abandon the superstructure, however soothing to our wishes, which has been reared upon a different foundation. If so, we must look to the period of the exchange of

the ratification in Europe for the date of the orders for evacuating. I have not in my possession materials for fixing with accuracy that period; but considering the time of the ratification here, and the time of its probable arrival in England, we are carried to the latter end of April, or beginning of May, 1784; so that it is not till about May, 1784, that we can charge upon Great Britain a delinquency as to the surrender of the posts.

Having now examined the nature of the infractions of the treaty of peace charged upon Great Britain with reference to dates, I shall, in the next number of this defence, trace some instances of infraction on our part with a like reference. The conclusions to be drawn from this comparison, if I mistake not, will greatly disconcert some articles of the prevailing creed on this head, and go far towards confirming what was preliminarily offered to evince the prudence of our envoy in relinquishing the favorite ground.

CAMILLUS.

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## NO. IV

1795.

An accurate enumeration of the breaches of the treaty of peace on our part, would require a tedious research. It will suffice to select and quote a few of the most prominent and early instances.

One of the earliest is to be found in an act of this State, for granting a more effectual relief in cases of certain trespasses, passed the 17th of March, 1783. This act takes away from any person (subjects of

Great Britain of every description included) who had, during the war, occupied, injured, destroyed, or received property, real or personal, of any inhabitant without the British lines, the benefit of the plea of a military order; consequently the justification which the laws and usages of war give, and the immunity resulting from the reciprocal amnesty which, expressly or virtually, is an essential part of every treaty of peace. To this it may be added that it was considered by Great Britain as a direct infraction of the sixth article of her treaty with us, which exempts all persons from prosecution "by reason of the part they might have taken in the war."

Mr. Jefferson, not controverting the point that the provisions of this act were contrary to the treaty, endeavors to get rid of the inference from it, by alleging three things: 1st. That it passed antecedently to the treaty, and so could not be a violation of an act of subsequent date. 2d. That the treaty was paramount to the laws of the particular States, and operated a repeal of them. 3d. That the exceptionable principle of this act was never sanctioned by the courts of justice, and in one instance (the case of Rutgers and Waddington in the mayor's court) was overruled.

As to the first point, it is sufficient to answer, that the law continued to operate, *in fact*, from the time of the treaty till the 4th of April, 1787, when there was a repeal of the exceptionable clause, by an act of our Legislature. During the period of four years, many suits were brought and many recoveries had;

extending even to persons who had been in the military service of Great Britain.

To the second point, these observations may be opposed:

The articles of the Confederation did not, like our present Constitution, declare that treaties were *supreme laws* of the land. The United States, under that system, had no courts of their own, to expound and enforce their treaties as laws. All was to depend upon the comparative authority of laws and treaties, in the judgment of the State courts.

The question, whether treaties were paramount to, and a virtual repeal of, antecedent laws, was a question of theory, about which there was room for, and in this country did exist, much diversity of opinion. It is notorious, that it has been strenuously maintained that however a national treaty ought, in good faith, to be conclusive on a State, to induce a repeal of laws contrary to it, yet its actual laws could not be controverted by treaty, without an actual repeal by its own authority. This doctrine has been emphatically that of the party distinguished by its opposition to national principles.

And it is observable, that Congress, not relying entirely upon the force of the treaty to abrogate contravening laws, in their address already cited, urge the States to a repeal of those laws. It is likewise observable in respect to the very act under consideration, that the Legislature of the State, in April, 1787, thought a positive repeal of the exceptionable clause necessary.

The complaints of a power whose treaty with us

was, *in fact*, violated by the operation of a State law, could never be satisfactorily answered by referring to a *theoretic, abstract, disputed* proposition. Such a power might reply with irresistible force: "It is not for us to concern ourselves about the structure and meaning of your political constitutions, or the force of legal maxims deducible from the forms and distributions of power which you have adopted for your government. It is *the act* in which alone we are interested; you have stipulated *this* and *that* to us—your stipulation in practice is contravened. It is your duty to see that there are no impediments from conflicting authorities within yourselves, to an exact fulfilment of your promises. If you suffer any such impediment to exist, you are answerable for the consequences."

As to the third point, it is to be observed, that though there may have been no express formal decision of our courts, enforcing the exceptionable principle of the trespass act, yet there never was a decision of a Supreme Court against it; and it may not be amiss to remark incidentally, that the decision of the mayor's court, from which Mr. Jefferson is glad to derive an exculpation of our conduct, was the subject of a severe animadversion at a popular meeting in this city, as a judiciary encroachment on the legislative authority of the State. The truth on this point is, that according to the opinion of our bar, a defence under a military order was desperate, and it was believed that a majority of our Supreme-Court bench would overrule the plea. Hence, in numerous cases where it might have been used, it was waived;

and the endeavor on behalf of the defendants was either to effect, on collateral grounds, a mitigation of damages, or to accomplish the best compromises that could be obtained; even the suit of Rutgers and Waddington, after a partial success in the mayor's court, was terminated by a compromise, according to the advice of the defendant's council, owing to the apprehension of an unfavorable issue in the Supreme Court; and this, notwithstanding the defendant was a British subject.

Under these circumstances, which are faithfully represented, is it possible to doubt, that the act in question operated a breach of our treaty with Great Britain—and this from the commencement of its existence? Can we reasonably expect that nations with whom we have treaties will allow us to substitute theoretic problems to performances of our engagements, and will be willing to accept them as apologies for actual violations?

It is pertinent to remark that the British commander-in-chief very early remonstrated against this act; but the remonstrance produced no effect.

Another act of the State of New York may be cited as a violation of the treaty on our part, which must have been nearly contemporary with that of the detention of the posts. Its date is the 12th of May, 1784. This act confirms, in express terms, all confiscations before made, notwithstanding errors in the proceedings, and takes away the writ of error upon any judgment previously rendered.

This was, in substance, a new confiscation; judgments which from error were invalid, were nullities.

To take away the writ of error, by which their nullity might be established, was to give them an efficacy which they did not before possess; and, as to the operation, cannot be distinguished from the rendering of new judgments. To make voidable acts of confiscation valid and conclusive, is equivalent to new acts of confiscation. A fair execution of the treaty required that every thing in this respect should be left where it was, and forbade the remedying of defects in former proceedings, as much as the restitution of new judgments.

Another and an unequivocal breach of the treaty is found in an act of South Carolina, of March 26, 1784. This act suspends the recovery of British debts for nine months, and then allows them to be recovered only in four yearly instalments, contrary to the express stipulation of the fourth article, "*that creditors on either side shall meet with no lawful impediments to the recovery of the full value in sterling money of all bona-fide debts theretofore contracted.*"

It is idle to attempt to excuse infractions of this kind by the pleas of distress and inability. This is to make the convenience of one party the measure of its obligation to perform its promises to another. If there was really an impossibility of payment, as has been pretended, there was no need of legislative obstruction; the thing would have regulated itself; and the very interest of the creditor was a pledge that no general evil could have resulted from allowing a free course to the laws. If such impediments could be justified, what impediments might not be justified? What would become of the article, the

only one in the treaty, to be performed by us, of real consequence to Great Britain?

This infraction by South Carolina was prior to that of the detention of the posts by Great Britain.

But the case of Virginia is still stronger than that of South Carolina. There is evidence which cannot be disputed, that her courts, in defiance of the treaty, have constantly remained shut to the recovery of British debts, in virtue of laws passed during the war.

An act of her General Assembly of the 22d June, 1784, after suggesting as breaches of the treaty by Great Britain the carrying off of the negroes and the detention of the posts, after instructing her delegates in Congress to request a remonstrance to the British court complaining of those infractions and desiring reparation, and after declaring that the national honor and interest of the citizens of that commonwealth obliged the Assembly to *withhold their co-operation in the complete fulfilment of the said treaty*, until the success of the aforementioned remonstrance is known, or Congress shall signify their sentiments touching the premises, concludes with the following resolution:

"That *so soon* as reparation is made for the foregoing infraction, or Congress shall judge it indisputably necessary, such acts and parts of acts *passed during the late war, as inhibit the recovery of British debts, ought to be repealed, and payment thereof made in such time and manner as shall consist with the exhausted situation of the commonwealth.*"

The plain language of this resolution is, that there

were acts passed during the war, which then actually inhibited the recovery of British debts; and that for the removal of this inhibition, a repealing act by the authority of Virginia was necessary.

However unfounded this position might have been in theory, here is conclusive evidence that the fact in Virginia was conformable to it; that her courts had been, ever since the peace, then were, and until a repealing law was passed were likely to continue, to be shut against the recovery of British debts. When testimony of this kind was urged by the British minister, was it possible for our envoy to make any solid reply? Who could be supposed to know better than the Legislature of Virginia the real state of the fact? When that Legislature declared it to be as has been stated, who or what could contradict it? With what truth has it been asserted, that "it was at all times *perfectly understood*" that treaties controlled the laws of the States?

Additional proof of the contrary is found in the subsequent conduct of Virginia. On the 12th of December, 1787, the State passed an act repealing all such acts or parts of acts of the State as had prevented or might prevent the recovery of debts due to British subjects according to the true intent of the treaty; but with this proviso, that there should be a suspension of the repeal till the governor, by advice of council, had, by proclamation, notified that Great Britain had delivered up the posts, and was taking measures for the further fulfilment of the treaty, by delivering up the negroes, or by making compensation for them. This denotes clearly, that

in the opinion of the Legislature of Virginia there were acts of that State which *had prevented* and *might prevent* the recovery of debts according to the treaty.

It is observable, too, that the resolutions of June, 1784, do not even give the expectation of a complete repeal of the impeding laws, in the event of reparation of the breaches of treaty by Great Britain. They only promise such a modification of them as would permit the payment in such *time and manner as should consist with the exhausted situation of the commonwealth;* that is, not according to the true intent of the treaty, but according to the opinion of the Legislature of Virginia of the abilities of the commonwealth.

As the infraction which these proceedings of Virginia admit resulted from acts passed during the war, it was of course coeval with the first existence of the treaty of peace, and seems to preclude the possibility of any prior breach by Great Britain. It has been at least demonstrated, that the detention of the posts was not such prior breach, as there was no obligation to surrender till after the exchange of the ratifications of the definitive treaty in England.

I pass by the serious contraventions of the treaty in this important article of the debts, which are of later date, because they do not affect the question of the first breach, though they are of great weight to demonstrate the obligation of the United States to make compensation.

The argument, then, upon the whole, as to the question of the first breach, stands thus: It is a

great doubt whether the carrying away of the negroes was at all a breach. If it was one, the trespass act of this State preceded it in date, and went into operation the very moment it was possible to issue process. The detention of the posts is subsequent to breaches of the article concerning their recovery of debts on our part. This, in the case of South Carolina, is determined by the date of her act (March 26, 1784), which is before the exchange of the ratifications of the definitive treaty could have taken place. In that of Virginia, it results from her own testimony, that impediments to the recovery of British debts, created by acts passed during the war, continued from the first moment of the peace until after the year 1787. Or if, contrary to our own interpretation, we are disposed to adhere to the provisional treaty, as the act from which performance was to date, we are guilty of a breach in not acting ourselves upon that treaty; a breach which, being contemporary with the existence of the treaty, seems not to admit of any prior contravention. From all which it follows, that take what ground we will, we must be perplexed to fix the charge of the first breach of the treaty upon Great Britain.

Let the appeal be to the understandings and hearts of candid men—men who have force of mind sufficient to rescue themselves from the trammels of prejudice, and who dare to look even unpalatable truths in the face. Let such men pronounce, whether they are still satisfied that Great Britain is clearly chargeable with the first breaches of the treaty? whether they are not, on the contrary, con-

vinced that the question is one so mixed and doubtful, as to render a waiver of it, even on the score of intrinsic merit, expedient on our part? and especially whether they can entertain a particle of doubt, that it was wiser to waive it than to suffer it to prove a final obstacle to the adjustment of a controversy on which the peace of their country was suspended? This was undoubtedly the alternative to our envoy. In the choice he made, the ultimate opinion of our enlightened country cannot fail to applaud his prudence.

CAMILLUS.

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NO. V

1795.

The discussion in the last two numbers has shown, if I mistake not, that this country by no means stands upon such good ground, with regard to the inexecution of the treaty of peace, as some of our official proceedings have advanced, and as many among us have too lightly credited. The task of displaying this truth has been an unwelcome one. As long as a contrary doctrine was either a mere essay of polemical skill, or a convenient ingredient of negotiation, it was natural for those who thought differently of it, to prefer silence to contradiction; but when it is made the engine of great errors, of national conduct, of excessive pretensions, which forbid a reasonable accommodation of national difference, and endanger rupture and war, on grounds which reason disapproves and prudence condemns, it becomes an indispensable duty to expose its hollowness and fallacy. Reserve then would be a crime.

The true patriot, who never fears to sacrifice popularity to what he believes to be the cause of public good, cannot hesitate to endeavor to unmask the error, though with the certainty of incurring the displeasure and censure of the prejudiced and unthinking.

The disposition to infract the treaty, which, in *several* particulars, discovered itself among us, almost as soon as it was known to have been made, was, from its first appearance, a source of humiliation, regret, and apprehension to those who could dispassionately estimate the consequences, and who felt a proper concern for the honor and character of the country. They perceived that besides loss of reputation, it must sooner or later lead to very serious embarrassments. They have been hitherto mistaken in no part of their anticipations; and if their faithful warning voice, now raised to check the progress of error, is as little listened to as when it was raised to prevent the commencement of it, there is too much cause to fear, that the experience of extensive evils may extort regrets which the foresight of an enlightened people ought to avert.

Citizens of United America! as you value your present enviable lot, rally round your own good sense! Expel from your confidence, men who have never ceased to misadvise you! Discard intemperate and illiberal passions! Aspire to the glory of the greatest triumph which a people can gain, a triumph over prejudice! Be just, be prudent! Listen impartially to the unadulterated language of truth! And, above all, guard your peace with anxious vigil-

ance against all the artful snares which are laid for it! Accompany me with minds open to conviction, in a discussion of unspeakable importance to your welfare!

Weigh well, as preliminary to further investigation this momentous proposition. "PEACE, in the particular situation of this independent country, is an object of such GREAT and PRIMARY magnitude, that it ought not to be relinquished, unless the relinquishment be clearly necessary to PRESERVE OUR HONOR in some UNEQUIVOCAL point, or to avoid the sacrifice of some RIGHT or INTEREST of MATERIAL and PERMANENT importance." This is the touchstone of every question which can come before us respecting our foreign concerns.

As a general proposition, scarcely any will dispute it; but in the application of the rule there is much confusion of ideas—much false feeling, and falser reasoning. The ravings of anger and pride are mistaken for the suggestions of honor. Thus are we told in a delirium of rage, by a gentleman of South Carolina, that our envoy should have demanded an *unconditional* relinquishment of the Western posts as a right; till which was granted, and until Lord Grenville had given orders to Lord Dorchester to that effect, *open, to be sent to our President, to be by him forwarded*, he should not have *opened his lips about the treaty. It was prostrating the dearest rights of freemen, and laying them prostrate at the feet of royalty.*

In a case of incontestible *mutual* infractions of a treaty, one of the parties is to demand, peremptorily

of the other, an *unconditional* performance upon his part, by way of preliminary, and without negotiation. An envoy sent to avert war, carrying with him the clearest indications of a general solicitude of his country that peace might be preserved, was, at the very first step of his progress, to render hostility inevitable, by exacting, not only what could not have been complied with, but what must have been rejected with indignation. The government of Great Britain must have been the most abject on earth, in a case so situated, to have listened for a moment to such a demand. And because our envoy did not pursue this frantic course—did not hold the language of an IMPERIOUS BASHAW to his TREMBLING SLAVE, he is absurdly stigmatized as having *prostrated the rights of freemen at the foot of royalty.* What are we to think of the state of mind which could produce so extravagant a sally? Would a prudent people have been willing to have entrusted a negotiation which involved their peace to the author of it? Will they be willing to take him as their guide in a critical emergency of their affairs? [1]

True honor is a rational thing. It is as distinguishable from Quixotism as true courage from the spirit of the bravo. It is possible for one nation to commit so undisguised and unqualified an outrage upon another as to render a negotiation of the question dishonorable. But this seldom, if ever, happens. In most cases, it is consistent with honor to

[1] No man in the habit of thinking well either of Mr. Rutledge's head or heart but must have felt, at reading the passages of his speech which have been published, pain, surprise, and mortification. I regret the occasion, and the necessity of animadversion.

precede rupture by negotiation, and whenever it is, reason and humanity demand it. Honor cannot be wounded by consulting moderation. As a general rule, it is not till after it has become manifest that reasonable reparation for a clear premeditated wrong cannot be obtained by an amicable adjustment, that honor demands a resort to arms. In all the questions between us and Great Britain, honor permitted the moderate course; in those which regard the inexecution of the treaty of peace, there had undoubtedly been mutual faults. It was, therefore, a case for negotiation and mutual reparation. True honor, which can never be separated from justice, even requires reparation from us to Great Britain, as well as from her to us. The injuries we complain of in the present war, were also of a negotiable kind. The first was bottomed on a controverted point in the laws of nations. The second left open the question, whether the principal injury was a designed act of the government or a misconstruction of its courts. To have taken, therefore, the imperious ground which is recommended, in place of that which was taken, would have been not to follow the admonitions of honor, but to have submitted to the impulse of passion and phrensy.

So likewise, when it is asserted that war is preferable to the sacrifice of our rights and interests, this, to be true, to be rational, must be understood of such rights and interests as are certain, as are important, such as regard the honor, security, or prosperity of our country. It is not a right disputable, or of small consequence, it is not an interest

temporary, partial, and inconsiderable, which will justify, in our situation, an appeal to arms.

Nations ought to calculate as well as individuals, to compare evils, and to prefer the lesser to the greater; to act otherwise, is to act unreasonably; those who counsel it are impostors or madmen.

These reflections are of a nature to lead to a right judgment of the conduct of our envoy in the plan of adjustment to which he has given his assent.

Three objects, as has appeared, were to be aimed at, on behalf of the United States: 1st. Compensation for negroes carried away. 2d. Surrender of the Western posts. 3d. Compensation for spoliation during the existing war.

Two of these objects, and these in every view the most important, have been provided for; how fully, will be examined hereafter. One of them has been given up—to wit: compensation for the negroes.

It has been shown, as I trust, to the conviction of dispassionate men, that the claim of compensation for the negroes is, in point of right, a very doubtful one; in point of interest, it certainly falls under the description of partial and inconsiderable; affecting in no respect the honor or security of the nation, and incapable of having a sensible influence upon its prosperity. The pecuniary value of the object is, in a national scale, trifling.

Not having before me the proper documents, I can only speak from memory. But I do not fear to be materially mistaken in stating that the whole number carried away, so ascertained as to have afforded evidence for a claim for compensation, was short of

3,000 persons, of whom about 1,300 were of sixteen years and upwards, men, women, and children. Computing these at an average of 150 dollars per head, which is a competent price, the amount would be 450,000 dollars, and not two or three millions, as has been pretended.

It is a fact, which I assert on the best authority, that our envoy made every effort in his power to establish our construction of the article relating to this subject, and to obtain compensation; and that he did not relinquish it till he became convinced, that to insist upon it would defeat the purpose of his mission, and leave the controversy between the two countries unsettled.

Finding, at the same time, that the two other points in dispute could be reasonably adjusted, is there any one who will be rash enough to affirm, that he ought to have broken off the negotiation on account of the difficulty about the negroes? Yes! there are men, who are thus inconsiderate and intemperate! But will a sober, reflecting people ratify their sentence?

What would such a people have said to our envoy, had he returned with this absurd tale in his mouth: "Countrymen! I could have obtained the surrender of your posts, and an adequate provision for the reparation of your losses by unjust captures; I could have terminated your controversy with Great Britain, and secured the continuance of your peace, but for one obstacle—a refusal to compensate for the negroes carried away; on this point the British Government maintained a construction of the treaty

different from ours, and adhered to it with inflexibility. I confess, that there appeared to be much doubt concerning the true construction; I confess, also, that the object was of inconsiderable value. Yet it made a part of our claims, and I thought the hazards of war preferable to a renunciation of it."

What would his adversaries have replied to him on such an occasion? No ridicule would have been too strong, no reproach too bitter. Their triumph would have been complete; for he would have been deservedly left without advocate, without apologist.

It cannot admit of a serious doubt, that the affair of the negroes was too questionable in point of right, too insignificant in point of interest, to have been suffered to be an impediment to the immense objects which were to be promoted by an accommodation of differences acceptable in other respects. There was no general principle of national right or policy to be renounced. No consideration of honor forbade the renunciation; every calculation of interest invited to it. The evils of war for one month would outweigh the advantage, if at the end of it there was a certainty of attainment.

But was war the alternative? Yes, war or disgrace?

The United States and Great Britain had been brought to issue. The recent spoliations on our commerce, superadded to the evils of a protracted Indian war, connected with the detention of the Western posts, and accompanied with indications of a design to contract our boundaries, obstructing the course of our settlements and the enjoyment of

private rights, and producing serious and growing discontent in our Western country, rendered it indispensable that there should be a settlement of old differences, and a reparation of new wrongs; or, that the sword should vindicate our rights.

This was certainly, and with reason, the general sense of our country when our envoy left it. There are many indications that it was the opinion of our government; and it is to be inferred, that our envoy understood the alternative to be as has been stated.

Indeed, what else could be contemplated? After the depredations which had been committed upon our commerce, after the strong sensibility which had been discovered upon the occasion in and out of our public councils, after an envoy extraordinary had been sent to terminate differences and obtain reparation; if nothing had resulted, was there any choice but reprisals? Should we not have rendered ourselves ridiculous and contemptible in the eyes of the whole world by forbearing them?

It is curious to observe the inconsistency of certain men. They reprobate the treaty as incompatible with our honor, and yet they affect to believe an abortion of the negotiations would not have led to war. If they are sincere, they must think that national honor consists in perpetually railing, complaining, blustering, and submitting. For my part, much as I deprecate war, I entertain no doubt that it would have been our duty to meet it with decision, had negotiation failed; that a due regard to our honor, our rights, and our interests would have enjoined it upon us. Nor would a pusillanimous

passiveness have saved us from it. So unsettled a state of things would have led to fresh injuries and aggravations; and circumstances, too powerful to be resisted, would have dragged us into war. We should have lost our honor without preserving our peace. Nations in similar situations have no option but to accommodate differences, or to fight. Those which have strong motives to avoid war, should, by their moderation, facilitate the accommodation of differences. This is a rule of good sense, a maxim of sound policy.

But the misfortune is, that men will oppose imagination to fact. Though we see Great Britain predominant on the ocean; though we observe her pertinaciously resisting the idea of pacification with France, amidst the greatest discouragements; though we have employed a man whose sagacity and integrity have been hitherto undisputed, and of a character far from flexible, to ascertain what was practicable; though circumstances favored his exertions; though much time and pains were bestowed upon the subject; though there is not only his testimony, but the testimony of other men who were immediately on the scene, and in whom there is every reason to confide, that all was attained which was attainable: yet we still permit ourselves to imagine, that more and better could have been done, and that by taking even now a high and menacing tone, Great Britain may be brought to our feet.

Even a style of politeness in our envoy has been construed to his disadvantage. Because he did not mistake strut for dignity, and rudeness for spirit;

because he did not, by petulance and asperity, enlist the pride of the British court against the success of his mission, he is represented as having humiliated himself and his nation. It is forgotten that mildness in the manner and firmness in the thing are most compatible with true dignity, and almost always go further than harshness and stateliness.

Suppositions that more could be done by displaying what is called greater spirit, are not warranted by facts. It would be extremely imprudent, on that basis, to trust ourselves to a further experiment—to the immense vicissitudes in the affairs of Europe, which from moment to moment may essentially vary the relative situations of the contending parties. If there ever was a state of things which demanded extraordinary circumspection, and forbade a spirit of adventure, it is that of the United States at the existing juncture, viewed in connection with the present very singular and incalculable posture of Europe.

But it is asked, to avoid Scylla, may we not run upon Charybdis? If the treaty should preserve our peace with Britain, may it not interrupt it with France? I answer, that to me there appears no room for apprehension. It will be shown in the course of the discussion, that the treaty interferes in no particular with our engagements to France, and *will make no alteration whatever in the state of things between us and her*, except as to the selling prizes in our ports, which, not being required by treaty, was originally permitted merely because there was no law to forbid it, and which being confined to France, was

of very questionable propriety on the principles of neutrality, and has been a source of dissatisfaction to the other belligerent powers. This being the case, no cause of umbrage is given to France by the treaty, and it is as contrary to her interest as to inclination, wantonly to seek a quarrel with us. Prostrate indeed were our situation, if we could not, without offending France, make a treaty with another power, which merely tended to extinguish controversy, and to regulate the rules of commercial intercourse, and this not only without violating any duty to France, but without giving any preference to another. It is astonishing that those who affect so much nicety about national honor, do not feel the extreme humiliation of such an idea. As to the denomination of alliance with Great Britain which has been given to the treaty, it is an insult to the understandings of the people to call it by such a name. There is not a tittle of it which warrants the appellation.

CAMILLUS.

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NO. VI

1795.

There is one more objection to the treaty for what it does not do, which requires to be noticed. This is an omission to provide against the impressment of our seamen.

It is certain that our trade has suffered embarrassments in this respect, and that there have been abuses which have operated very oppressively upon

our seamen; and all will join in the wish that they could have been guarded against in future by the treaty.

But it is easier to desire this, than to see how it could have been done. A general stipulation against the impressment of our seamen would have been nugatory, if not derogatory. Our right to an exemption is perfect by the laws of nations, and a contrary right is not even pretended by Great Britain. The difficulty has been, and is, to fix a rule of evidence, by which to discriminate our seamen from theirs, and by the discrimination to give ours protection, without covering theirs in our service. It happens that the two nations speak the same language, and in every exterior circumstance closely resemble each other; that many of the natives of Great Britain and Ireland are among our citizens, and that others, without being properly our citizens, are employed in our vessels.

Every body knows that the safety of Great Britain depends upon her marine. This was never more emphatically the case, than in the war in which she is now engaged. Her very existence as an independent power, seems to rest on a maritime superiority.

In this situation, can we be surprised that there are difficulties in bringing her to consent to any arrangement which would enable us, by receiving her seamen into our employment, to detain them from her service? Unfortunately, there can be devised no method of protecting our seamen which does not involve that danger to her. Language and appearance, instead of being a guide, as between

other nations, are, between us and Great Britain, sources of mistake and deception. The most familiar experience in the ordinary affairs of society proves, that the oaths of parties interested cannot be fully relied upon. Certificates of citizenship, by officers of one party, would be too open to the possibility of collusion and imposition, to expect that the other would admit them to be conclusive. If inconclusive, there must be a discretion to the other party which would destroy their efficacy.

In whatever light they may be viewed, there will be found an intrinsic difficulty in devising a rule of evidence safe for both parties, and consequently, in establishing one by treaty. No nation would readily admit a rule which would make it depend on the good faith of another, and the integrity of its agents, whether her seamen, in time of war, might be drawn from her service, and transferred to that of a neutral power. Such a rule between Great Britain and us would be peculiarly dangerous, on account of circumstances, and would facilitate a transfer of seamen from one party to another. Great Britain has accordingly perseveringly declined any definite arrangement on the subject, notwithstanding earnest and reiterated efforts of our government.

When we consider candidly the peculiar difficulties which various circumstances of similitude between the people of the two countries oppose to a satisfactory arrangement, and that to the belligerent party it is a question of *national safety*, to the neutral party a question of commercial convenience and individual security, we shall be the less disposed to

think the want of such a provision as our wishes would dictate a blemish in the treaty.

The truth seems to be, that, from the nature of the thing, it is matter of necessity to leave it to occasional and temporary expedients—to the effects of special interpositions from time to time, to procure the correction of abuses; and if the abuse becomes intolerable, to the *ultima ratio;* the good faith of the parties, and the motives which they have to respect the rights of each other and to avoid causes of offence, and vigilance in noting and remonstrating against the irregularities which are committed, are probably the only peaceable sureties of which the case is susceptible.

Our Minister Plenipotentiary, Mr. Pinckney, it is well known, has long had this matter in charge, and has strenuously exerted himself to have it placed upon some acceptable footing; but his endeavors have been unsuccessful, further than to mitigate the evil by some additional checks, and by drawing the attention of the British Government to the observance of more caution. A more sensible effect of our representations has been lately experienced; and with attention and vigilance that effect may be continued, and perhaps increased. But there is reason to fear that it would constantly be found impracticable to establish an efficacious conventional guard.

I proceed now to the examination of the several articles in the treaty, in the order in which they stand.

The first contains merely a general declaration

that there shall be peace and friendship between the contracting parties, the countries and people of each, without exceptions of persons or places.

One would have imagined that this article, at least, would have escaped a formal objection, however it might have been secretly viewed as the most sinful of all, by those who pant after war and enmity between the two countries. Nothing but the fact could have led to a surmise that it was possible for it to have been deemed exceptionable; and nothing can better display the rage for objection which actuates the adversaries of the treaty, than their having invented one against so innocent a provision.

But the committee appointed by a meeting at Charleston (South Carolina) have sagaciously discovered, that this article permits "the unconditional return to our country of all persons who were proscribed during the late war."

With all but men determined to be dissatisfied, it would be a sufficient answer to such an objection to say, that this article is a formula in almost every treaty on record, and that the consequence attributed to it was never before dreamt of, though other nations besides ourselves have had their proscriptions and their banishments.

But this is not all—our treaty of peace with Great Britain in 1783 has an equivalent stipulation in these words (article 6): "There shall be a firm and perpetual peace between his Britannic Majesty and the said States, and between the subjects of the one, and the citizens of the other." In calling this an equivalent stipulation, I speak with reference to

the objection which is made. The argument to support that objection would be to this effect: "Exiles and criminals are regarded as within the peace of a country; but the people of each are, by this article, placed within the peace of the other; therefore proscribed persons are restored to the peace of the United States, and so lose the character of exiles and criminals." Hence the argument will turn upon the word "peace"—the word "friendship" will have no influence upon the question. In other respects there is no difference in substance between the two articles. For the terms "people," "subjects," "citizens," as used in the two treaties, are synonymous. If, therefore, the last treaty stipulates that there shall be peace between the governments, countries, and people of the two nations, the first stipulates what is equivalent, that there shall be peace between the two governments, and the subjects and citizens of each. The additional words, "without exception of persons and places," can make no difference, being merely surplusage. If A says to B: "I will give you all the money in this purse," the gift is as complete as if he had said: "I give you all the money in this purse, without exception of a single dollar."

But the object of the stipulation, and the subject of the objection, have no relation to each other. National stipulations are to be considered in the sense of the laws of nations. Peace, in the sense of those laws, defines a state which is opposite to WAR. Peace, in the sense of the municipal laws, defines a state which is opposite to that of criminality. They are, consequently, different things; and a subject of

Great Britain, by committing a crime, may put himself out of the peace of our government, in the sense of our municipal laws, while there might be a perfect peace with him, in the sense of the laws of nations; and *vice versa*, there might be war with him, in the sense of the laws of nations, and peace in that of the municipal laws.

The punishment of a subject of Great Britain as a felon would certainly not constitute a state of war between the parties, nor interfere with the peace which is stipulated by this article; though it is declared that it shall be *inviolable*, and might as well be affirmed to prevent the punishment of future as of former criminals.

But who, in the contemplation of the laws of the respective states, are the proscribed persons? They must have been understood to have been subjects or citizens of the states which proscribed them—consequently cannot be presumed to be comprehended in an article which stipulates peace between the nations and their respective citizens.

This is not a stipulation of peace between a nation and its own citizens; nor can the idea of expatriation be admitted to go so far as to destroy the relation of citizen, as regards amenability for a crime. To this purpose, at least, the offender must remain a citizen.

There can hardly have been a time when a treaty was formed between two nations, when one or the other had not exiled criminals or fugitives from justice, which it would have been unwilling to reinstate. Yet this was never deemed an obstacle to the article, nor has an immunity from punishment ever been

claimed under it, nor is there the least ground to assert that it might be claimed under it.

It follows that the objection which has been taken to this article is wholly without foundation. It is humiliating to the human understanding, or disreputable to the human heart, that similar objections should come from sensible men; it is disgustful to have to refute them. The regard I feel for some of those who have brought it forward makes it a painful task. How great is the triumph of passion over the judgment on this occasion!

CAMILLUS.

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## NO. VII

1795.

The second article of the treaty stipulates that his Britannic Majesty will withdraw all his troops and garrisons from all *posts* and *places* within the boundary lines assigned by the treaty of peace to the United States; and that this evacuation shall take place on or before the first day of June, 1796; the United States, in the meantime, *at their discretion*, extending their settlements to any part within the said boundary lines, *except within the precincts or jurisdictions* of any of the said posts; that all settlers and traders within the precincts or jurisdictions of the said posts, shall continue to enjoy, unmolested, all their property of every kind, and shall be protected therein; that they shall be at liberty to remain there, or to remove with all or any part of their effects; also to sell their lands, houses, or effects, or to retain

the property thereof at their discretion; that such of them as shall continue to reside within the said boundary lines shall not be compelled to become citizens of the United States, but shall be at liberty to do so, if they think proper, making and declaring their election within a year after the evacuation; and that those who should continue after the expiration of a year, without having declared their intention of remaining subjects of his Britannic Majesty, shall be considered as having elected to become citizens of the United States.

This article, which accomplishes a primary object of our envoy's mission, and one of primary importance to the United States, has been as much clamored against as if it had made a formal cession of the posts to Great Britain. On this point an uncommon degree of art has been exerted, and with no small success. The value of the principal thing obtained has been put out of sight by a misrepresentation of incidental circumstances.

But the fact is, nevertheless, that an object has been accomplished, of vast consequence to our country. The most important *desiderata* in our concerns with foreign powers are, the possession of the Western posts, and a participation in the navigation of the river Mississippi. More or fewer of commercial privileges are of vastly inferior moment. The force of circumstances will do all we can reasonably wish in this respect; and, in a short time, without any steps that may convulse our trade or endanger our tranquillity, will carry us to our goal.

The recovery of the Western posts will have many

important consequences. It will extinguish a source of controversy with Great Britain, which at a period not distant, must have inevitably involved the two countries in a war, and the thing was becoming every day more and more urgent. It will enable us effectually to control the hostilities of the Northern and Western Indians, and in so doing will have a material influence on the Southern tribes. It will therefore tend to rescue the country from what is at present its greatest scourge, Indian wars. When we consider that these wars have, four years past, taken an extra million annually from our revenue, we cannot be insensible of the importance of terminating that source of expense. This million, turned to the redemption of our debt, would contribute to complete its extinguishment in about twenty years.[1] The benefits of tranquillity to our frontier, exempting its inhabitants from the complicated horrors of savage warfare, speak too loudly to our humanity, as well as to our policy, to need a commentary.

The advantages of the recovery of the posts do not stop here; an extension of trade is to be added to the catalogue. This, however, need only be mentioned at this time, as it will come again into view in considering the third article.

But two consequences, not commonly adverted to, require particular notice in this place.

There is just ground of suspicion, corroborated by various concurring circumstances, that Great Britain has entertained the project of contracting our

[1] This is a rough calculation, but it cannot materially err.

boundaries to the Ohio. This has appeared in Canada —at the British garrisons—at the Indian towns— at Philadelphia—and at London. The surrender of the posts forever cuts up by the roots this pernicious project. The whole of our Western interests are immediately and deeply concerned in the question.

The harmonious and permanent connection of our Western with our Atlantic country, materially depends on our possession of the Western posts. Already has great discontent been engendered in that country by their detention. That discontent was increasing and rankling daily. It was actually one of the aliments of the insurrection in the western parts of Pennsylvania. While the posts remained in the hands of Great Britain, dangerous tamperings with the inhabitants of that country were to be apprehended—a community of views between Great Britain and Spain might have taken place, and by force and sedition events formidable to our general union might have been hazarded. The disposition or prevention of that community of views is a point of the greatest moment in our system of national policy. It presses us to terminate differences and extinguish misunderstandings with Great Britain; it urges us to improve the favorable moment, and stamps with the charge of madness the efforts to let go the hold which the treaty, if mutually ratified, would give us.

Whoever will cast his eye upon the map of the United States, will survey the position of the Western posts, their relations to our Western waters, and their general bearings upon our Western country,

and is at the same time capable of making the reflections which an accurate view of the subject suggests, will discover multiplied confirmations of the position, that the possession of those posts by us has an intimate connection with the preservation of union between our Western and Atlantic territories; and whoever can appreciate the immense mischiefs of a disunion will feel the prodigious value of the acquisition. To such a man the question may be confidently put: Is there any thing in the treaty conceded by us to Great Britain, to be placed in competition with this single acquisition? The answer could not fail to be in the negative.

But it is said by way of objection, that, admitting the posts will be surrendered at the time stipulated, it is no acquisition by this treaty; it is only the enjoyment of a right which was secured by the treaty of peace.

With as much good sense might it be said, that the stipulation of reparation for the spoliation of our property, or even immediate actual reparation, if it had been obtained, was nothing gained, because the laws of nations gave us a right to such reparation; and it might in this way be proved to have been impossible for our envoy to have effected any thing useful or meritorious.

Let us see what is the real state of the case. Great Britain had engaged, by the treaty of peace, to surrender the Western posts *with all convenient speed*, but without fixing a precise time. For the cause or on the pretext of our not having complied with the treaty on our part, especially in not removing

the impediments which the antecedent laws of particular States opposed to the recovery of British debts, she delayed, and afterward refused, to make the surrender; and when our envoy left this country, there was too much appearance of an intention on her part to detain them indefinitely, and this after having actually kept them ten years. The treaty of peace was consequently in this particular suspended, if not superseded. It was either to be reinstated by a new agreement, or enforced by arms. The first our envoy has effected; he has brought Great Britain to abandon the dispute, and to fix a precise, determinate time when, at furthest, the posts are to be delivered up. It is therefore to this new agreement that we shall owe the enjoyment of them, and it is, of course, entitled to the merit of having obtained them; it is a positive ingredient in its value, which cannot be taken from it; and it may be added, that this is the first time that the merit of procuring, by negotiation, *restitution* of a *right withheld* was ever denied to the instrument which procured it.

But the picture given of the situation of Great Britain, to warrant the inferences which are drawn, is exaggerated and false. It cannot be denied that she is triumphant on the ocean; that the acquisitions which she has made upon France are hitherto greater than those which France has made upon her. If, on the one hand, she owes an immense debt, on the other she possesses an immense credit, which there is no symptom of being impaired. British credit has become, in a British mind, an article of

faith, and is no longer an article of reason. How long it may last, how far it may go, is incalculable. But it is evident that it still affords prodigious resources, and that it is likely, for some time to come, to continue to afford them. In addition to this, it is a well-ascertained fact, that her government possesses internally as much vigor, and has as much national support, as it perhaps ever had at any former period of her history. Alarmed by the unfortunate excesses in France, most men of property cling to the government, and carry with them the great bulk of the nation, almost the whole of the farming interest, and much the greatest proportion of other industrious classes. Her manufactures, though probably wounded by the war, are still in a comparatively flourishing condition. They suffice not only for her own supply, but for the full extent of foreign demand, and the markets for them have not been materially contracted by the war. Her foreign commerce continues to be immense; as a specimen of it, it may be mentioned, that the ships from India this year announced to have been seen upon or near the British coast amounted to thirty-five in number, computed to be worth between four and five millions sterling. It is no light circumstance in the estimate of her resources, that a vast preponderancy in that quarter of the globe continues to nourish her wealth and power.

If from a view of Great Britain, singly, we pass to a view of her in her foreign connections, we shall find no cause to consider her a prostrate nation. Among her allies are the two greatest powers of

Europe (France excepted)—namely, Russia and Austria, or the emperor; Spain and Sardinia continue to make a common cause with her. There is no power of Europe which has displayed a more uniform character of perseverance than Austria; for which she has very strong motives on the present occasion. Russia, too, is remarkable for her steadiness to her purpose, whatever it may be. It is true, that heretofore she has not discovered much zeal in the coalition, but there are symptoms of her becoming more closely and cordially engaged. If she does, she is a great weight in the scale.

Against this will be set the astonishing victories, heroic exploits, and vast armies of France, her rapid conquests to the Rhine, the total reduction of Holland, the progress of her arms in Spain and Italy, the detaching of the King of Prussia from the coalition, and the prospect of detaching some others of the German princes; and it will be added, that the continental enemies of France appear exhausted, despairing, and unable to continue the war.

This, if offered only to show that there is no probability that the enemies of France can succeed in the original object of the war against her, or can divest her of her acquisitions on the continent, has all the force that may be desired to be given to it; but when it is used to prove that the situation of Great Britain is so desperate and humbled as to oblige her to receive from France, or the United States, any conditions which either of them may think fit to impose, the argument is carried infinitely too far. It is one thing for a country to be in a pos-

ture not to receive the law from others, and a very different thing for her to be in a situation which obliges others to receive the law from her, and, what is still stronger, from all her friends. France evidently cannot annoy Russia; she cannot, without great difficulty, from their geographical position, make any further acquisitions upon the territories of Austria. Britain and her possessions are essentially safe while she maintains a decided maritime superiority. As long as this is the case, even supposing her abandoned by all her allies, she never can be in the situation which is pretended by the opposers of the treaty.

But in describing the situation of France, only one side of the medal is presented. There is another side far less flattering, and which, in order to come to a just conclusion, must be impartially viewed.

If the allies of Great Britain are fatigued and exhausted, France cannot be in a better condition. The efforts of the latter, in proportion to intrinsic resources, have, no doubt, been much greater than those of the former. It is a consequence from this, physically certain, that France must be still more fatigued and exhausted even than her adversaries. Her acquisitions cannot materially vary this conclusion: the Low Countries, long the theatre of the war, must have been pretty well emptied before they fell into her hands. Holland is an artificial power; her life and strength were in her credit; this perished with her reduction. Accordingly the succors extracted from her, compared with the scale of the war, have been insignificant.

But it is conjectured, that as much has not been done as might have been done; that restitution of the posts has not been procured, but only a promise to restore them at a remote period, in exchange for a former promise which had been violated; that there is no good ground of reliance upon the fulfilment of this new promise, for the performance of which there ought to have been some surety or guaranty; that the restitution of the posts ought to have been accompanied with indemnification for the detention, and for the expenses of the Indian wars which have been occasioned by that detention and by the instigation of British intrigue; that it was better to go to war than to relinquish our claim to such indemnification, or if our present circumstances did not recommend this, it was better to wait till it was more convenient to us to enforce our claims than to give them up. These are the declamations by which this part of the treaty is arraigned. Let us see if they are the random effusions of enthusiasm, or the rational dictates of sound policy.

As to the suggestion that more might have been done than was done, it must of necessity be mere conjecture and imagination. If the picture given of the situation of Great Britain was better justified by facts than it is, it would not follow that the suggestion is true; for the thing would depend not on the real situation of the country, but on the opinion entertained of it by its own administration,—on the personal character of the prince and of his council, —on the degree in which they were influenced by

pride and passion, or by reason. The hypothesis, that the dispositions of a government are conformable with its situation, is as fallacious a one as can be entertained. It is to suppose, contrary to every day's experience, that Cabinets are always wise. It is, on the part of those who draw the inference, to suppose, that a Cabinet, the most violent, rash, and foolish of Europe, is at the same time moderate and prudent enough to act according to the true situation of the country. Who of our enthusiasts, reasoning from his view of the abased condition of Great Britain, has not long since imagined that she ought to be on her knees to France suing for mercy and forgiveness? Yet how different hitherto is the fact! If we carefully peruse the speeches of the leading members of the convention, we shall observe the menaces against Britain frequently interspersed with invitations to peace; while the British Government maintains a proud and distant reserve, repels every idea of peace, and inflexibly pursues the path of war. If the situation of Europe in general, and of Great Britain in particular, as is pretended, authorized us to expect whatever we chose, how happens it that France, with all her victories, has not yet been able to extort peace?

As to the true position of France, we are not left to mere inference. All the official reports, all the private accounts from thence acknowledge a state of extreme embarrassment and distress—an alarming derangement of the finances, and a scarcity not distant from famine. To this are to be added a continuance of violent and destructive conflicts

of parties, and the unextinguishable embers of insurrection.

This fair comparison of the relative situation of the contending parties will, I know, be stigmatized as blazoning the strength and resources of Great Britain, and depreciating the advantages of France. But the cant phrases of party cannot alter the nature of truth; nor will they prevent the people of the United States from listening impartially to it, or from discerning that it is a mark of fidelity to their interests to counteract misrepresentation by placing facts fairly before them, and a duty which they owe to themselves, and which they cannot omit to perform without betraying their own interests, to receive them candidly, and weigh them maturely.

The conclusion is, that all those highly charged declamations which describe Great Britain to us as vanquished and humbled, as ready to pass under the yoke at command, and to submit to any conditions which we may think fit to prescribe, are either the chimeras of over-heated imaginations, or the fabrications of impostors; and if listened to, can have no other effect than to inspire a delusive presumption and a dangerous temerity.

But to judge the better of the extravagance of these declamations, it will be useful to go back to the periods when the negotiation began and ended. Our envoy arrived in England, and entered upon the business of his mission, at the moment when there was a general elation on account of the naval victory gained by Lord Howe, and previous to those important successes which have terminated in the con-

quest of Holland; and the treaty was concluded by the 19th of November last, prior to the last-mentioned event, and the defection of the King of Prussia. The posture of things at the time it was in negotiation, and not at this time, is the standard by which to try its merits; and it may be observed, that it is probable the negotiation received its first impression, and even its general outline, anterior to the principal part of the disasters sustained by the coalesced powers in the course of the last campaign.

It may not be improper to add, that if we credit the representations of our envoy, Great Britain manifested similar dispositions with regard to the treaty at the commencement as at the close of the negotiation; whence it will follow that too much has been attributed in this country to the victories of France.

The subject of the second article will be resumed and concluded in the next number.

CAMILLUS.

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## NO. VIII

1795.

One of the particulars in which our envoy is alleged to have fallen short of what might or ought to have been done, respects the time for the surrender of the Western posts. It is alleged, that there ought either to have been an immediate surrender, or some guaranty or surety for the performance of the new promise. Both parts of the alternative presuppose that Great Britain was to have no will upon the subject; that no circumstances

of security or convenience to her were to be consulted; that our envoy was not to negotiate, but to command. How unsubstantial the foundation on which this course of proceeding is recommended, has been already developed.

The fact was, that our envoy pressed an early evacuation of the posts; but there was an inflexible adherence on the other side to the term limited in the treaty. The reasons understood to have been assigned for it were to this effect, viz.: That according to the course of the Indian trade, it was customary to spread through the nations goods to a large amount, the returns for which could not be drawn into Canada in a shorter period than was proposed to be fixed for the evacuation; that the impression which the surrender of all the posts to American garrisons might make on the minds of the Indians could not be foreseen; that there was the greatest reason for caution, as, on a former occasion, it had been intimated to them by public agents of the United States, that they had been *forsaken* and *given* up by the British Government; that the protection promised on our part, however sincere, and however competent in other respects, might not be sufficient in the first instance to prevent the embarrassment which might ensue; that for these reasons the traders ought to have time to conclude their adventures, which were predicated upon the existing state of things; that they would in future calculate upon the new state of things; but that, in the meantime, the care of government ought not to be withdrawn from them.

There is ground to believe, that there were representations on behalf of the Canada traders, alleging a longer term than that which was adopted in the treaty, to be necessary to wind up and adapt their arrangements to the new state of things; and that the term suggested by them was abridged several months. And it may not be useless to observe, as explanatory to the reasons given, that in fact it is the course of the trade to give long credits to the Indians, and that the returns for goods furnished in one year, only come in the next year.

What was to be done in this case? Was the negotiation to break off, or was the delay to be admitted? The last was preferred by our envoy; and the preference was rightly judged.

The consequence of breaking off the negotiation has been stated. No reasonable man will doubt that delay was preferable to war, if there be good ground of reliance that the stipulation will be fulfilled at the appointed time. Let us calmly examine this point.

The argument against it is drawn from the breach of the former promise. To be authorized to press this argument, we ought to be sure that all was right on our part. After what has been offered on this subject, are we still convinced that this was the case? Are we able to say that there was nothing in our conduct which furnished a ground for that of Great Britain? Has it not been shown to be a fact, that, from the arrival of the provisional articles in this country, till after the ratification thereof, by the definitive treaty, acts of States interdicting the

recovery of British debts, and other acts militating against the treaty, continued in operation? Can we doubt, that subjects of Great Britain, affected by these acts, carried complaints to the ears of their government? Can we wonder, if they made serious impressions there, if they produced dissatisfaction and distrust? Is it very extraordinary, if they excited the idea of detaining the posts as a pledge till there were better indications on our part? Is it surprising, if the continuance of these acts, and the addition of others, which were new and positive breaches of the treaty, prolonged the detention of the posts?

In fine, was the delay in surrendering so entirely destitute of cause, so unequivocal a proof of a perfidious character, as to justify the conclusion, that no future dependence can be made on the promises of the British Government? Discerning men will not hastily subscribe to this conclusion.

Mutual charges of breach of faith are not uncommon between nations; yet this does not prevent their making new stipulations with each other, and relying upon their performance. The argument from the breach of one promise, if real, to the breach of every other, is not supported by experience; and if adopted as a general rule, would multiply, infinitely, the impediments to accord and agreement among nations.

The truth is, that though nations will too often evade their promises on colorable pretexts, yet few are so profligate as to do it without such pretexts. In clear cases, self-interest dictates a regard to the

obligations of good faith; nor is there any thing in the history of Great Britain which warrants the opinion, that she is more unmindful than other nations of her character for good faith.

Yet she must be so, and in an extreme degree, if she be capable of breaking, without real cause, a *second* promise on the *same* point, after the termination, by a new treaty, of an old dispute concerning it, and this too on the basis of mutual reparation. It would indicate a destitution of principle, a contempt of character, much beyond the usual measure, and to an extent which it may be affirmed is entirely improbable.

It is a circumstance of some moment in the question, that the second promise is free from the vagueness of the first, as to the time of execution. It is not to be performed *with all convenient speed*, but by a day certain, which cannot be exceeded. This would give point to violation, and render it unequivocal.

Another argument against the probability of performance has been deduced from the supposed deficiency of good reasons for the delay, which is represented as evidence of want of sincerity in the promise.

Besides the reasons which were assigned for that delay, there are others that may be conjectured to have operated, which it would not have been equally convenient to avow, but which serve to explain the delay, different from the supposition of its having been calculated for ultimate evasion. If, as we have with too much cause suspected, Great Britain, or

her representatives in Canada, whether with or without orders, had really countenanced the hostilities of the Western Indians, it was to be expected that she should think it incumbent upon her to give them sufficient time to make peace, before an evacuation of the posts should put them entirely in our power. She might, otherwise, have provoked them to hostilities against her own settlements, and have kindled in their minds inextinguishable resentments. It was not certain how soon a peace should be brought about; and it might be supposed, that the disposition to it on our part might be weakened or strengthened by the proximity or remoteness of the period of the surrender. Moreover, some considerable time might be requisite to prepare those establishments for the security of Canada which the relinquishment of the posts on our side would be deemed to render necessary.

The latter motive is one not justly objectionable; the former implies an embarrassment, resulting from a culpable policy, which was entitled to no indulgence from us, but which, nevertheless, must have had a pretty imperious influence on the conduct of the other party, and must have created an obstacle to a speedy surrender not easy to be surmounted. Taken together, we find in the reasons assigned, and in those which may be presumed to have operated, a solution of the pertinacity of Great Britain on the subject of time, without impeaching, on that account, the sincerity of the promise to surrender.

But we have very strong holds, for the performance of this promise, upon the interest of Great

Britain: 1st. The interest which every nation has in not entirely forfeiting its reputation for honor and fidelity. 2d. The interest which results from the correlative stipulation with regard to the indemnification for the British debts, a point upon which there will be no inconsiderable mercantile sensibility. 3d. The interest of preserving peace with this country, the interruption of which, after all that has passed, could not fail to attend the non-surrender of the posts at the stipulated time.

It is morally certain that circumstances will every day add strength to this last motive. Time has already done much for us, and will do more. Every hour's continuance of the war in Europe must necessarily add to the inconveniences of a rupture with this country, and to the motives which Great Britain must feel, to avoid an increase of the number of her enemies, to desire peace, and, if obtained, to preserve it.

The enemies of the treaty, upon their own calculations, can hardly dispute that if the war continues another year after the present, the probable situation of Great Britain will be a complete security for her compliance with her promise to surrender the posts. But let us suppose that a general peace takes place in Europe this winter, what may then be the disposition of Great Britain in June next, as to war or peace with this country?

I answer that the situation will be, of all others, that which is most likely to indispose her to a war with us. There is no juncture at which war is more unwelcome to a nation than immediately after the

experience of another war, which has required great exertions, and has been expensive, bloody, and calamitous. The minds of all men then dread the renewal of so great an evil, and are disposed rather to make sacrifices to peace than to plunge afresh into hostilities. The situation of Great Britain, at the end of the war in which she is now engaged, is likely to be the most discouraging that can be imagined to the provocation of new wars. Here we may discover a powerful security for the performance of her stipulations.

As to the idea of a guaranty or surety for the fulfilment of the promise, it cannot be seriously believed that it was obtainable. It would have been an admission of the party that there was a well-founded distrust of its faith. To consent to it, therefore, would have been to subscribe to its own humiliation and disgrace, the expectation of which has been shown to be ridiculous.

But why was there not equally good reason that we should have given a guaranty or surety for the performance of our new promise, with regard to the debts? And if there was to have been reciprocity, where should we have conveniently found that guaranty or surety? Should we have thought it very reputable to ourselves to have been obliged to furnish it?

The arguments of the opposers of the treaty are extremely at variance with each other. On the one hand, they represent it as fraught with advantages to Great Britain, without equivalents to the United States—as a premeditated scheme to sacrifice our

trade and navigation to hers—as a plan dictated by her for drawing the two countries into close connection and alliance, and for making our interests subservient to hers; on the other hand, they tell us that there is no security for the surrender of the posts according to stipulation. How is the one thing to be reconciled with the other? If the treaty is such an immense boon to Great Britain, if it be such a masterpiece of political craft on her side, can there be any danger that she will destroy her favorite work by not performing the conditions on which its efficacy and duration must depend? There is no position better settled than that the breach of any article of a treaty by one party, gives the other an option to consider the whole treaty as annulled. Would Great Britain give us this option, in a case in which she had so much to lose by doing it?

This glaring collision of arguments proves how superficially the adversaries of the treaty have considered the subject, and how little reliance can be placed on the views they give of it.

In estimating the plan which the treaty adopts for the settlement of the old controversy, it is an important reflection that, from the course of things, there will be nothing to be performed by us before the period for the restitution of the posts will have elapsed; and that, if this restitution should be evaded, we shall be free to put an end to the whole treaty, about which there could not be a moment's hesitation. We should then be where we were before the treaty, with the advantage of having strengthened the justice of our cause, by

removing every occasion of reproach which the infractions of the treaty of peace may have furnished against us.

Two other particulars, in which this part of the treaty is supposed to be defective, regard the want of indemnification for the detention of the posts, and for the expenses of Indian wars.

Those who make the objection may be safely challenged to produce precedents of similar indemnifications, unless imposed by *conquering* powers on the vanquished, or by powers of overbearing strength upon those which were too weak to dispute the logic of superior force. If this were the real situation of the United States and Great Britain, then is the treaty inexcusably faulty; but if the parties were to treat and agree as equal powers, then is the pretension extravagant and impracticable. The restitution of the specific thing detained is all that was to be expected, and, it may be added, it is all that was ever really expected on the part of this country, so far as we may reason either from official acts or informal expressions in the public opinion.

In cases where clear injuries are done, affecting objects of known or easily ascertained values, pecuniary compensation may be expected to be obtained by negotiation; but it is believed that it will be impossible to cite an example of compensation so obtained, in a case in which territory has been withheld on a dispute of title, or as a hostage for some other claim (as, in the present instance, for securing the performance of the 4th article of the treaty of

peace). The recovery of the territory withheld is the usual satisfaction.

The want of a rule to adjust consequential damages is, in such cases, a very great difficulty. In the instance under discussion, this difficulty would be peculiarly great. The posts are, for the most part, in a wilderness. There are but two of them which have any adjacent settlements: Point-au-Fer, or Dutchman's Point, to which a part of a tract of land, called Caldwell's Manor, with a few inhabitants, has been claimed as appurtenant; and Detroit, which has a settlement in the town and neighborhood of between two and three thousand souls. In the vicinity of the other posts, on our side there is scarcely an inhabitant. It follows that very little damage could be predicated either upon the loss of revenue from, or of the profits of trade with, the settlements in the vicinity of the posts. The trade of the Indians within our limits would consequently be the basis of the claim of compensation. But here the ignorance or spirit of exaggeration of the opponents of the treaty has been particularly exemplified. The annual loss from this source has been stated by a very zealous writer against the treaty, who signs himself Cato, at 800,000 dollars.

Now it is a fact well ascertained, that the mean value of the whole exports from Canada in peltries (which constitute the returns of Indian trade) in the years 1786 and 1787, was something short of 800,000 dollars. It is also a fact, in which all men informed on the subject agree, that the trade with

the Indians within our limits[1] is not more than about one eighth of that which furnishes the peltry exported from Canada. Hence the total product of our Indian trade could not be computed at more than 100,000 dollars. What proportion of this may be profit is not easy to be determined; but it is certain that the profits of that trade, from the decrease of wild animals, and the inferiority of their kinds, are not considerable. Many assert that it is scarcely any longer worth following. Twenty per cent., therefore, would probably be a large allowance, which would bring the loss on our Indian trade, by the detention of the posts, to about 20,000, instead of 800,000, dollars per annum, as has been asserted.

But might not a claim, even of this sum, by way of indemnification, be encountered with some force,

[1] An account of peltries exported from Canada in 1786 and 1787:

| | | 1786 | 1787 |
|---|---|---|---|
| Beaver | skins | 116,509 | 139,509 |
| Martin | do. | 58,132 | 68,132 |
| Otter | do. | 26,330 | 26,330 |
| Mink | do. | 9,951 | 17,951 |
| Fisher | do. | 5,813 | 5,813 |
| Fox | do. | 6,213 | 8,913 |
| Bear | do. | 22,108 | 17,108 |
| Deer | do. | 126,000 | 102,656 |
| Racoon | do. | 108,346 | 140,346 |
| Cat | do., cased | 3,026 | 4,526 |
| Do. | do., open | 2,925 | 1,825 |
| Elk | do. | 7,515 | 9,815 |
| Wolf | do. | 12,287 | 9,687 |
| Carcajoux | do. | 503 | 653 |
| Tiger | do. | 77 | 27 |
| Seal | do. | 157 | 125 |
| Muskrat | do. | 202,456 | 240,456 |
| Deer | do., dressed | lbs. 5,488 | 1,778 |
| Castors | | " 1,454 | 1,434 |

by the observation, that there is the highest probability that the capital and labor which would have been employed to produce 20,000 dollars profit on the trade with the Indians, have been quite as productively employed in other channels, and consequently, that there may have been no loss at all?

Thus we see how erroneous are the data which serve to magnify claims, in themselves insignificant, and which, from the great uncertainty of their quantum, are exposed to serious objections. Are claims like these, proper subjects on which to stake the peace of the United States?

The reasonableness of indemnification for the expenses of Indian wars, independent of the unusual nature of the claim, might have been matter of endless debate. We might have been told, that the Indians ascribe those wars to pretensions upon their lands, by virtue of treaties with the former Government of the United States, imposed by violence, or contracted with partial and inadequate representations of their nation; that our own public records witness, that the proceedings of our agents, at some of those treaties, were far from unexceptionable; that the wars complained of are to be attributed to errors in our former policy, or mismanagement of our public agents, not to the detention of the posts; that it must be problematical how much of the duration or expenses of those wars are chargeable upon that detention; and, that the posts having been detained by way of security for the performance of the article respecting debts, there was no responsibility for collateral and casual damages. Had we

resorted to the charge of their having instigated or prompted those wars, they would have denied the charge, as they have repeatedly done before; and, though we might have been able to adduce circumstances of suspicion against them, they would have contested their validity and force; and, whether guilty or not, would have thought their honor concerned in avoiding the most distant concession of having participated in so improper a business.

In every view, therefore, the claim for indemnification was a hopeless one; and to have insisted upon it would have answered no other purpose than to render an amicable adjustment impossible. No British Minister would have dared to go to a British Parliament to ask provision for such an expenditure. What, then, was to be done? Were we now or hereafter to go to war to enforce the claim? Suppose this done, and fifty or a hundred millions of dollars expended in the contest, what certainty is there that we should at last accomplish the object?

Moreover, the principle of such a war would require that we should seek indemnification for the expenses of the war itself, in addition to our former claim. What prospect is there, that this also would be effected? yet if not effected, it is evident that we should have made a most wretched bargain.

Why did we not insist on indemnification for the expenses of our Revolution war? Surely, not because it was less reasonable, but because it was evident that it could not have been obtained, and because peace was necessary to us as well as to our enemy.

This likewise would be the end of a war undertaken to enforce the claim of indemnification for the detention of the posts. We should at length be glad to make peace, either without the indemnification sought, or at best at an expense to carry on the war, without a chance of reimbursement, with which the thing gained would bear no comparison.

The idea which has been thrown out, of leaving the posts in the hands of the British, till we might be better able than at present to go to war for indemnification, is a notable political expedient. This would be to postpone, of choice, the possession of an object which has been shown to be demanded by very urgent and important general considerations; to submit to certain and great inconveniences from that privation, including probably the continuance or renewal of Indian hostilities; and to run the risk, from the growth of the British settlements in the neighborhood of the posts, and various unforeseen casualties, of their ultimate acquisition becoming difficult and precarious. For what? why, to take at last the chances of war, the issue of which is ever doubtful, to obtain an object which, if obtained, will certainly cost more than it is worth. The expenses of war apart, pecuniary indemnification upon any possible scale will ill compensate for the evils of the future detention, till the more convenient time for going to war should arrive. What should we think of this policy, if it should turn out that the posts and the indemnification too were to be finally abandoned?

CAMILLUS.

NO. IX

1795.

It was my intention to have comprised in two numbers the examination of the second article; but, on experiment, it was found expedient to add a third. I resume, for a moment, the subject of indemnification for the detention of the posts.

As an inducement to persist in this claim, we are assured that the magnanimity of France would have procured for us its establishment. In the first place, this supposes that we were to have become a party in the war; for, otherwise, it would be silly to imagine that France would, on our account, embarrass herself with a difficulty of this sort. In this case, and supposing the object accomplished, still the injuries, losses, and expenses of war would have greatly overbalanced the advantage gained. But what certainty have we that France will be able to dictate terms even for herself? Could we expect or rely, after the terrible and wasting war in which she has been engaged, that she would be willing to encumber the making of peace with additional obstacles, to secure so trifling a point with us? Would it be even humane or friendly in us to ask her to risk the prolonging of her calamities for so trivial an object? A conduct like this, with reference either to France or to ourselves, would resemble that of the gamester who should play *millions* against *farthings*. It is so preposterous in every sense, that the recommendation of it, if sincere, admits of but one construction—namely, that those who recommend it wish our envoy to have acted not as if he had been

sent *to make peace*, but as if he had been sent *to make war*, to blow and spread the desolating flames of discord and contention.

There is a marked disingenuousness running through the observations which are made to the prejudice of the treaty; they endeavor constantly to have it understood that our envoy abandoned, without effort, the claims which have not been established. Whence is this inferred? Is it from the silence of the treaty? Surely we can only expect to find there what was *agreed upon*, not what was *discussed* and *rejected*. The truth is, that as well on this point of indemnification for the detention of the posts, as on that of compensation for the negroes carried away, our envoy urged our pretensions as far and as long as he could do it, without making them final obstacles to the progress of the negotiation.

I shall now enumerate and answer the remaining objections which have appeared against this article. They are these: 1. That the posts to be surrendered, instead of being described in general terms, should, for greater certainty, have been specially enumerated; that now the uncertainty of a part of the boundary line may furnish a pretext for detaining some of them. 2. That the expressions "precincts and jurisdictions," which are excepted from our right of settlement, previous to the surrender, are so vague and indeterminate, as to be capable of being made to countenance encroachments. 3. That it was improper to have stipulated, for the inhabitants, the option of residing and continuing British subjects, or of becoming American citizens: that the first was

to establish, by treaty, a British colony within our limits; the last, to admit, without the power of exception, bitter enemies of the country to the privileges of citizens. 4. That the securing to those inhabitants the enjoyment of their property is exceptionable, as being a "cession without equivalent of an *indefinite extent of territory.*" This is the character given to it by the meeting at Philadelphia.

The answer to the first objection is, that the enumeration proposed might have included the very danger which is objected to the provision as it stands, and which is completely avoided by it. The principal posts occupied by the British are known, and might easily have been enumerated; but there is a possibility of there being others not known, which might have escaped. Last year there started up a post, which had not been before heard of, on the pretence of an old trading establishment. Who knows with absolute certainty how many similar cases may exist in the vast extent of wilderness, as far as the Lake of the Woods, which, for several years past, has been inaccessible to us? If our envoy's information could have been perfect at the time of his last advices from America, between that period and the signing of the treaty changes might have taken place—that is, trading houses might have grown into military posts, as they did in the case referred to; a case which, in fact, happened after the departure of our envoy from the United States. Was it not far better than to hazard an imperfect specification, to use terms so general and comprehensive, as could not fail, in any circumstances, to

embrace every case? Certainly it was; and the terms "*all ports and places,*" which are those used in the treaty, are thus comprehensive. Nothing can escape them.

Neither is there the least danger that the uncertainty [1] of a part of the boundary line can be made a pretext for detaining the posts which it was impossible to enumerate. This will appear from an inspection of the map. The only uncertain part of the boundary line (except that depending on the river St. Croix, which is on a side unconnected with the position of the posts) is that which is run from the Lake of the Woods to the Mississippi. The most western of our known posts is at Michilimackinac, at or near the junction of the lakes Huron and Michigan, eastward near eleven degrees of longitude of the Lake of the Woods, and about ten degrees of longitude of that point on the Mississippi, below the Falls of St. Anthony, where a survey, in order to a settlement of the line, is to begin. Moreover, our line, by the treaty of peace, is to pass through the Lake Huron, and the water communication between that lake and Lake Superior, and through the middle of Lake Superior, and thence westward through other waters, to the Lake of the Woods—that is, about half a degree of latitude more northward, and about eight degrees of longitude more westward, than any part of the Lake Michigan. Whence it is manifest,

[1] This uncertainty, it is to be observed, results not from the late treaty, but from the treaty of peace. It is occasioned by its being unknown whether any part of the Mississippi extends far enough north to be intersected by a due west line from the Lake of the Woods.

that any closing line, to be drawn from the Lake of the Woods to the Mississippi, must pass at a distance of several hundred miles from Michilimackinac. If the British, therefore, should be disposed to evade the surrender, they will seek for it some pretext more plausible than one which involves a palpable geographical absurdity. Nor can we desire a better proof of the ignorance or disingenuousness of the objectors to the treaty, than their having contrived one of this nature.

The general terms used were to be preferred, for the very reason that there was a doubt about the course of a part of the boundary line; for, if there should chance to exist any post now unknown, so near the line as to render it questionable, in the first instance, on which side it may fall, the moment the line is settled, the obligation to surrender will be settled with it.

The second objection loses all force, when it is considered that the exception can only operate till the first of June next, the period for the surrender of the posts; and that, in the meantime, there is ample space for settlement, without coming to disputable ground. There was, besides, real difficulty in an accurate definition. What the precincts and jurisdictions of the posts are, is a question of fact. In some instances, where, from there being no settlements over which an actual jurisdiction had been exercised, a good rule might have been, the distance of gunshot from the fortifications, which might have been settled at a certain extent in miles, say three or four. But in some cases an actual jurisdiction

has been exercised, under circumstances which created obstacles to a precise definition. The case of Caldwell's Manor, in the vicinity of Dutchman's Point, is an example. There, a mixed jurisdiction has been sometimes exercised by the British, and by the State of Vermont, connected with a disputed title to that manor; one party claiming under an ancient French grant, and the other under the State of Vermont. Detroit and its vicinity would also have occasioned embarrassment. From the situation of the settlements, and of a number of dispersed trading establishments, a latitude was likely to have been required, to which it might have been expedient to give a sanction. In such situations, where a thing is to last but a short time, it is commonly the most eligible course, to avoid definition. It is obvious that no ill can result from the want of one, if the posts are surrendered at the time agreed; if not, it is equally plain that it can be of no consequence, because the whole article will be void.

The third objection becomes insignificant, the moment the real state of things is adverted to. This has been described in a former number for another purpose, but will now be recapitulated, with one or two additional facts. The first posts, beginning eastward, are Point-au-Fer and Dutchman's Point, on Lake Champlain. The whole number of persons in this vicinity, over whom jurisdiction has been claimed by the British, may amount to a hundred families. But the claim of jurisdiction here has been only occasionally and feebly urged. And it is asserted, in addition, by well-informed persons, that

the above-mentioned families have been, for some time, regularly represented in the Legislature of Vermont; the ordinary civil jurisdiction of which State has, with little interruption, been extended over them. At neither of the other posts, to wit, Oswego, Niagara, the Miami, Detroit, Michilimackinac, is there any settlement, except at Detroit, where, and in the vicinity of which, there may be between two and three thousand persons, chiefly French Canadians and their descendants. It will be understood, that I do not consider as a settlement two or three log houses for traders.

It follows, that the number of persons who can be embraced by the privileges stipulated is too insiderable to admit of attaching any political consequences whatever to the stipulation. Of what importance can it possibly be to the United States, whether two or three thousand persons, men, women, and children, are permitted to reside within their limits, either as British or American subjects, at their option? If the thing was an object of desire to Great Britain, for the accommodation of the individuals concerned, could it have merited a moment's hesitation on our part? As to residence, it is at the courtesy of nations at peace to permit the residence of the citizens of each other within their respective territories. British subjects are now free, by our laws, to reside in all parts of the United States. As to the permission to become citizens, it has been the general policy and practice of our country to facilitate the naturalization of foreigners. And we may safely count on the interest of individuals, and on

that desire to enjoy equal rights which is so deeply planted in the human breast, that all who resolve to make their permanent residence with us will become citizens.

It is true, that there may be a few obnoxious characters (though I do not recollect to have heard of more than two or three) among the number of those who have acquired by the stipulation a right to become citizens of the United States. But would it ever have been worthy of the dignity of the national wrath, to have launched its thunders against the heads of two, or three, or half a dozen despicable individuals? Can we suppose that, without a stipulation, it would have been thought worth the while to make a special exception of their cases out of the operation of our general laws of naturalization? And if this had not been done, would they not have found means, if they desired it, after the lapse of a short period, to acquire the rights of citizens? It is to be observed, that citizens of our own, who may have committed crimes against our laws, not remitted by the treaty of peace, would find no protection under this article.

Suppose the stipulation had not been made, what would have been the probable policy of the United States? Would it not have been to leave the handful of settlers undisturbed, in quiet enjoyment of their property, and at liberty, if British subjects, to continue such, or become American citizens, on the usual conditions? A system of depopulation, or of coercion to one allegiance or another, would have been little congenial with our modes of

thinking, and would not, I am persuaded, have been attempted.

If, then, the treaty only stipulates in this respect what would have been the course of things without it, what cause for serious objection can there be on this account?

The matter of the fourth objection can only derive a moment's importance from misapprehension. It seems to have been imagined, that there are large tracts of land, held under British grants, made since the peace, which are confirmed by the part of the article that gives the inhabitants the right of removing with, selling, or *retaining* their property.

In the first place it is to be observed, that if such grants had been made, the stipulation could not be deemed to confirm them, because our laws must determine the question, what is the property of the inhabitants; and they would rightfully decide, that the British Government, since the treaty of peace, could make no valid grants of land within our limits. Upon the ground even of its own pretensions, it could not have made such grants. Nothing more was claimed, than the right to detain the posts as a hostage. The right to grant lands presupposes much more, a full right to sovereignty and territory.

But, in the second place, it has always been understood, and upon recent and careful inquiry is confirmed, *that the British Government has never, since the peace, made a grant of lands within our limits.* It appears, indeed, to have been its policy to prevent settlements in the vicinity of the posts.

Hence the stipulation, as it affects lands, does

nothing more than confirm the property of those which were holden at the treaty of peace; neither is the quantity considerable; and it chiefly, if not altogether, depends on titles acquired under the French Government, while Canada was a province of France.

In giving this confirmation, the treaty only pursues what is a constant rule among civilized nations. When territory is ceded or yielded up by one nation to another, it is a common practice, if not a special condition, to leave the inhabitants in the enjoyment of their property. A contrary conduct would be disgraceful to a nation; nor is it very reputable to the objectors to the treaty, that they have levelled their battery against this part of it. It is a reflection upon them, too, that they employ for the purpose terms which import more than is true, even on their own supposition, and are, therefore, calculated to deceive; for the confirmation of property to individuals could be at most a cession only of the right of soil, and not of territory, which term has a technical sense, including jurisdiction.

Let it be added, that the treaty of peace, in the article which provides "that there should be no future confiscations nor prosecutions against any person or persons by reason of the part which he or they might have taken in the war, and that no person should, on that account, suffer any future loss or damage, either in his person, liberty, or property," did substantially what is made an objection to the treaty under consideration. It will not, I believe, be disputed, that it gave protection to all property antecedently owned, and not confiscated. Indeed,

it is a question whether the stipulations cited would not have affected, with regard to other rights than those of property, a great part of what is regulated by the last treaty. Its provisions in this particular were, perhaps, in the main, unnecessary, further than to obviate a doubt which might have arisen from the suspension of the treaty, by the withholding of the posts.

Thus have I gone through every objection to the second article, which is in any degree colorable; and I flatter myself have shown, not only that the acquisition made by it is of great and real value, but that it stands as well as circumstances permitted, and is defensible in its details. I have been the more particular in the examination, because the assailants of the treaty have exerted all their ingenuity to discredit this article, from a consciousness, no doubt, that it is a very valuable item of the treaty, and that it was important to their cause to envelop it in as thick a cloud of objection as they were able to contrive. As an expedient of party, there is some merit in the artifice; but a sensible people will see that it is merely artifice. It is a false calculation, that the people of this country can ever be ultimately deceived.

CAMILLUS.

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## NO. X

1795.

The object of the third article is connected with that of the second. The surrender of the posts naturally drew with it an arrangement with regard to

inland trade and navigation. Such an arrangement, convenient in several respects, appears to be in some respects necessary. To restrain the Indians on either side of the line from trading with the one party or the other, at discretion, besides the questionableness of the right, could not be attempted without rendering them disgusted and hostile. The truth of this seems to have influenced the conduct of Great Britain and France, while the latter was in possession of Canada. The 15th article of the treaty of peace of Utrecht, in the year 1713, allows free liberty to the Indians on each side to resort for trade to the British and French colonies. It is to be observed, too, that the Indians not only insist on a right of going to trade with whom they please, but of permitting whom they please to come to trade with them, and also to reside among them for that purpose. Thus, the Southern and Southwestern Indians within our limits maintain a constant intercourse with Spain, established on the basis of treaty, —nor has their right to do it been hitherto contested by the United States. Indeed, on what clear principle of justice could this natural right of trade, of a people not subject to our ordinary jurisdiction, be disputed? This claim, on their part, gives a corresponding claim to neighboring nations to trade with them. Spain would think the pretension to exclude her inadmissible; and Great Britain would have thought the same, if she had found it her interest to assert the right of intercourse;—views which would always be seconded by the Indians from regard to their own interest and independence.

It was a point, therefore, which it much concerned the preservation of good understanding between the parties and with the Indians, to regulate on some equitable plan; and the more liberal the plan, the more agreeable to a natural course of things, and to the free participation of mutual advantages, the more likely was it to promote and prolong that important benefit.

In the second place, the expediency of some arrangement was indicated by the circumstance of the boundary line between the parties, running for an extent of sixteen hundred miles through the middle of the same rivers, lakes, and waters. It may be deemed impossible, from the varying course of winds and currents, for the ships of one party to keep themselves constantly within their own limits, without passing or transgressing those of the other. How, indeed, was the precise middle line of those great lakes to be always known?

It appears evident, that to render the navigation of these waters useful to, and safe for, both parties, it was requisite that they should become common. Without this, frequent forfeitures to enforce interdictions of intercourse might be incurred, and there would be constant danger of interference and controversy. It is probable, too, that when those waters are better explored in their whole extent, it will be found that the best navigation of those lakes is sometimes on the one side, sometimes on the other, and that common convenience will, in this respect, also be promoted by community of right.

Again, it is almost always mutually beneficial for

bordering territories to have free and friendly intercourse with each other. This relates not only to the advantages of an interchange of commodities for the supply of mutual wants, and to those of the reciprocal creation of industry connected with that interchange, but also to those of avoiding jealousy, collision, and contest, of preserving friendship and harmony. Proximity of territory invites to trade; the bordering inhabitants, in spite of every prohibition, will endeavor to carry it on; if not allowed, illicit adventures take the place of the regular operations of legalized commerce—individual interest leads to collusions to evade restraining regulations—habits of infracting the laws are produced—morals are perverted—securities, necessarily great in proportion as they counteract the natural course of things, lay the foundation of discontents and quarrels. Perhaps it may be safely affirmed, that freedom of intercourse, or violent hatred and enmity, is the alternative in every case of contiguity of territory.

The maxims of the United States have hitherto favored a free intercourse with all the world. They have conceived that they had nothing to fear from the unrestrained competition of commercial enterprise, and have only desired to be admitted to it on equal terms. Hence, not only the communication by sea has been open with the adjacent territories on our continent as well as with more distant quarters of the globe: but two ports have been erected on Lake Champlain for the convenience of interior commerce with Canada; and there is no restriction upon any nation, to come by the Mississippi to the only

port which has been established for that side of the Union. These arrangements have excited neither blame nor criticism.

Our envoy, therefore, in agreeing to a liberal plan of intercourse with the British territories in our neighborhood, has conformed to the general spirit of our country, and to the general policy of our laws. Great Britain, in acceding to such a plan, departed from her system of colonial monopoly, a departure which ought to be one recommendation of the plan to us; for every relaxation of that system paves the way for other and further relaxations. It might have been expected, also, that a spirit of jealousy might have proved an obstacle on the part of Great Britain; since, especially if we consider the composition of those who inhabit and are likely to inhabit Canada, it is morally certain that there must be, as the result of a free intercourse, a far greater momentum of influence of the United States upon Canada, than of Canada upon the United States. It would not have been surprising, if this jealousy had sought to keep us at a distance, and had counteracted the wiser policy of limiting our desires by giving us possession of what is alone to us truly desirable, the advantages of commerce, rather than of suffering our wishes to be stimulated and extended by privation and restraint.

New ideas seem of late to have made their way among us. The extremes of commercial jealousy are inculcated. Regulation, restriction, exclusion, are now with many the favorite topics; instead of feeling pleasure that new avenues of trade are

opened, a thousand dangers and mischiefs are portrayed when the occasion occurs. Free trade with all the world seems to have dwindled into trade with France and her dominions. The love-sick partisans of that country appear to regard her as the epitome of the universe; to have adopted for their motto, "All for love, and the world well lost."

These new propensities towards commercial jealousy have been remarkably exemplified with respect to the article immediately under consideration. Truly estimated, it is a valuable ingredient in the treaty; and yet there is, perhaps, no part of it which has been more severely reprobated. It will be easy to show that it has been extremely misrepresented, and that what have been deemed very exceptionable features do not exist at all.

We will first examine what the article really does contain, and afterwards what are the comparative advantages likely to result to the two countries.

The main stipulation is, that "it shall at all times be free to his Majesty's subjects, and to the citizens of the United States, and also to the Indians dwelling on either side of the boundary line, freely to pass and repass, *by land and inland navigation*, into the respective territories and countries of the two parties on the continent of America (the country within the limits of the Hudson's Bay Company only excepted), and to navigate all the lakes, rivers, and waters thereof, and freely to carry on trade and commerce with each other."

The subject-matter of this stipulation is plainly *inland trade and commerce*, to be carried on *by land*

*passage and inland navigation.* This appears, first, from the terms of the article. The subjects and citizens of the two parties, and also the Indians dwelling on each side of the boundary line, are freely to pass and repass. In what manner? *by land* and *inland navigation:* to what places? into the respective territories and countries of the two parties, on the continent of America (the country of the Hudson's Bay Company only excepted). They are also to navigate all the lakes, rivers, and *waters thereof*, and freely to carry on trade and commerce with each other. This right to navigate lakes, rivers, and waters, must be understood with reference to inland navigation: because this gives it a sense conformable with the antecedent clause, with which it is immediately connected, as part of a sentence; because the right to *pass* and *repass*, being expressly restricted to land and inland navigation, it would not be natural to extend it by implication, on the strength of an ambiguous term, to passage by sea, or by any thing more than inland navigation; because the lakes and rivers have direct reference to inland navigation, showing that to be the object in view; and the word "waters," from the order in which it stands, will, most consistently with propriety of composition, be understood as something less than lakes and rivers, as ponds, canals, and those amphibious waters, to which it is scarcely possible to give a name; and because the waters mentioned are "waters thereof," that is, waters of the territories and countries of the two parties on the continent of America,—a description which cannot very aptly be

applied to the sea, or be supposed to include navigation by sea to the United States, or from them to the British territories. It is true, that nations, for various purposes, claim and exercise jurisdiction over the seas immediately adjacent to their coasts; yet this is subject to the common right of nations to the innocent use of those seas for navigation; and it is not, *prima facie*, presumable, that two nations, speaking of the waters of each other, would mean to give this appropriate denomination to waters in which both claimed some common right. The usual description of such waters in treaties is, "the *seas near* the countries," etc. But were it otherwise, still the navigating from the *open* sea into these waters could not be within the permission to navigate those waters, and might be prohibited.

The above construction is confirmed by the general complexion of the treaty. It is the manifest province of the eighteen articles, which succeed the first ten, to regulate external commerce and navigation. The regulations they contain are introduced thus, by the eleventh article: "It is agreed between his Majesty and the United States of America, that there shall be a reciprocal and entirely perfect liberty of navigation and commerce between their respective people, in the manner, under the limitations, and on the conditions specified in the following articles." Then follow articles which provide fully and distinctly for trade and navigation between the United States and the British West Indies, between the Asiatic dominions of Great Britain and the United States, and lastly, between the European

dominions of Great Britain and the United States. These eighteen articles properly constitute the treaty of commerce and navigation between the two countries. Their general scope, and some special provisions which they contain, prove that the object of the third article is local and partial; that it contemplates, exclusively, an interior commerce by land and inland navigation (except as to the Mississippi), and particularly that it does not reach at all our Atlantic ports. An instance of one of the special provisions alluded to will be cited in the further examination of this article.

In opposition to this construction, much stress is laid upon the provisions which immediately succeed the clauses that have been quoted. They are in these words: "But it is understood, that this article does not extend to the admission of vessels of the United States into the seaports, harbors, bays, or creeks of his Majesty's said territories, nor into such parts of the rivers in his said territories as are between the mouth thereof and the highest port of entry from the sea, except in small vessels trading bona fide between Montreal and Quebec; nor to the admission of British vessels from the sea into the rivers of the United States, beyond the highest ports of entry for foreign vessels from the sea!" The last, it is said, contains an implication, that under this article, British vessels have a right to come to our highest ports of entry for foreign vessels from the sea, while we are excluded from the seaports of the British territories on this continent.

But this is altogether an erroneous inference. The

clauses last cited are inserted for greater caution, to guard expressly against any construction of the article by implications more or less remote; contrary to the actual regulations of the parties, with regard to external commerce and navigation. Great Britain does not now permit a trade by sea to Nova Scotia and Canada. She therefore declares that the article shall not be deemed to contravene this regulation. The United States now permit foreign vessels to come to certain ports of entry from the sea, but exclude them from other more interior ports of entry, to which our own vessels may come.[1] It is therefore declared on their part, that the article shall not be construed to contravene this regulation. This was the more proper as the right of inland navigation might have given some color to the claim of going from an outer to an inner port of entry. But this negative of an implication, which might have found some color in the principal provision, can never be construed into an affirmative grant of a very important privilege, foreign to that principal provision. The main object of the article, it has been seen, is trade by land and inland navigation. Trade and navigation by sea, with our seaports, is an entirely different thing. To infer a positive grant of this privilege, from a clause which says, that the right of inland navigation shall not be construed to permit vessels coming from the sea, to go from the ports of entry, to which our laws now

[1] An example of this is found in the State of New York. Foreign vessels can only enter and unlade at the city of New York; vessels of the United States may enter at the city of Hudson, and unlade there and at Albany.

restrict them, to more interior ports, would be contrary to reason, and to every rule of sound construction. Such a privilege could never be permitted to be founded upon any thing less than a positive and explicit grant. It could never be supported by an implication drawn from an article relative to a local and partial object, much less by an implication drawn from the negative of another implication. The pretension, that all our ports were laid open to Great Britain by a covert and side-wind provision, and this without reciprocity, without a right of access to a single seaport of the other party in any part of the world, would be too monstrous to be tolerated for an instant. The principles of equity between nations, and the established rules of interpretation, would unite to condemn so great an inequality, if another sense could possibly be found for the terms from which it might be pretended to be deduced. It would be in the present case the more inadmissible, because the object is embraced and regulated by other parts of the treaty on terms of reciprocity.

The different mode of expression, in the clause last cited, when speaking of the British territories, and when speaking of the United States, has furnished an argument for the inference which has been stated. But this difference is accounted for by the difference in the actual regulations of the parties, as described above. The object was on each side to *oust* an implication interfering with those regulations. The expressions to effect it were commensurate with the state of the fact on each side; and

consequently do not warrant any collateral or special inference.

The only positive effect of these clauses is to establish, that the navigation from Montreal to Quebec shall be carried on in what are called "small vessels, trading bona fide between Montreal and Quebec." In determining their sense, it merits some observation, that they do not profess to *except from* the operation of the general provisions of the article the *seaports*, etc., of the British territories; but declare, that it is understood that those provisions *do not extend to* them. This is more a declaration that the antecedent provisions were not so broad as to comprehend the cases, than an exception of the cases from the operation of those provisions.

Those who are not familiar with laws and treaties, may feel some difficulty about the position, that particular clauses are introduced only for greater caution, without producing any new effect; but those who are familiar with such subjects, know, that there is scarcely a law or a treaty which does not offer examples of the use of similar clauses; and it not unfrequently happens, that a clear meaning of the principal provision is rendered obscure by the excess of explanatory precaution.

The next clause of this article is an exception to the general design of it, confirming the construction I have given. "The river Mississippi shall, however, according to the treaty of peace, be entirely open to both parties; and it is further agreed that all the ports and places on its eastern side, to whichsoever of the parties belonging, may freely be resorted to

and used by both parties, in as ample a manner as any of the Atlantic ports or places of the United States, or any of the ports or places of his majesty in Great Britain."

If the general provision gives access to all our ports, which must be the doctrine if it gives access to our Atlantic ports, then it would equally have this effect with regard to the Mississippi. But this clause clearly implies the contrary, not only by introducing a special provision for the ports of the Mississippi, but by introducing it expressly, as a further or additional agreement; the words are: "*it is further agreed*, etc., and these ports are to be enjoyed by each party, *in as ample a manner as any of the Atlantic ports or places of the United States, or any of the ports or places of his majesty in Great Britain.* This reference to our Atlantic ports, coupling them with the ports of Great Britain, shows that the Mississippi ports are to be regulated by a rule or standard different from the ports for that inland navigation, which is the general object of the article; else, why that special reference? why not have stopped at the words "*used by both parties*"? If it be said, that the reference to our Atlantic ports implies, that they are within the purview of the article, let it be observed, that the same argument would prove that the ports of Great Britain are also within its purview, which is plainly erroneous; for the main provisions are expressly confined to the territories of the parties on this continent. The conclusion is that the reference is to a standard, out of the article, and depending on other parts of the treaty.

It may be useful to observe here, that the Mississippi ports being to be used only in as ample, and not in a more ample manner, than our Atlantic ports, and the ports of Great Britain, will be liable at all times to all the regulations, privileges, and restrictions of the ports with which they are assorted.

The next clause is a still further refutation of the construction which I oppose.

"All goods and merchandise, *whose importation into his majesty's said territories in America shall not be entirely prohibited*, may freely, for the purposes of commerce, be carried into the same, in the *manner aforesaid*, by the citizens of the United States; and such goods and merchandise shall be subject to *no higher or other duties than would be payable by his majesty's subjects on the importation of the same from Europe, into the said territories:* and in like manner, all goods and merchandise, *whose importation into the United States shall not be wholly prohibited*, may freely, *for the purposes of commerce*, be carried into the same, *in the manner aforesaid, subject to no higher or other duties than would be payable by the citizens of the United States*, on the importation of the same in *American vessels into the Atlantic ports of the said States:* and all goods not prohibited to be exported from the said territories respectively, may, in like manner, be carried out of the same by the two parties respectively, paying duty as aforesaid."

The words, "*in the manner aforesaid*," occur twice in these clauses, and their equivalent, "*in like manner*," once. What is the meaning of this so often repeated phrase? it cannot be presumed, that it

would have been inserted so frequently without having to perform some office of consequence. I answer, that it is evidently the substitute for these other words of the main provision, "*by land and inland navigation.*" This is "*the manner aforesaid.*" This is the channel, through which goods and merchandises passing would be subject to no other or higher duties than would be payable in the British territories by British subjects, if imported from Europe; or in the territories of the United States, by citizens of the United States, if brought by American vessels into our Atlantic ports. No other reasonable use can be found for the terms. If they are denied this sense, they had much better been omitted, as being not only useless but as giving cause to suppose a restriction of what, it is pretended, was designed to be general—a right of importing in every way, and into all parts of the United States, goods and merchandise, if not entirely prohibited, on the same duties as are payable by our own citizens when brought in our own vessels.

These words, "whose importation into the United States shall not be *entirely* prohibited," is a further key to the true sense of the article. They are equivalent to these other words: "whose importation *into all parts* of the United States shall not be prohibited." The design of this clause is to prevent importation, through the particular channels contemplated by the article, being obstructed by a partial or by any other than a general prohibition. As long as certain goods may be introduced into the United States through the Atlantic ports, they may also be brought

into them through the channels designated by this article—that is, by land and inland navigation. The making a prohibition in the given case to depend on a general prohibition, is conclusive to prove, that the article contemplates only *particular channels*. On any other supposition, the clause is nonsense. The true reading, then, of this part of the article, must be as follows: "Goods and merchandise, whose importation *into all parts* of the United States shall not be prohibited, may freely, for the purposes of commerce, be carried into the same, *in manner aforesaid*—that is, *by land and inland navigation*, from the territories of his majesty on the continent of America."

There are still other expressions in the article, which are likewise an index to its meaning. They are these: "*would be payable* by the citizens of the United States, on the *importation of the same in American vessels into the Atlantic ports of the said States.*" This reference to a rate of duties, which would be payable on importation into the Atlantic ports, as a rule or guide for the rate of duties, which is to prevail in the case meant to be comprehended in the article, is full evidence that importation in the Atlantic ports is not included in that case. The mention of importation in American vessels, confirms this conclusion, as it shows that the article itself contemplates, that the discrimination made by our existing laws may continue.

But the matter is put out of all doubt by those parts of the fifteenth article which reserve to the British Government the right of imposing such duty

as may be adequate to *countervail the difference* of duty, *now payable* on the importation of European and Asiatic goods, when imported into the United States in British and American vessels; and which stipulate, that "the United States will not INCREASE *the now subsisting difference* between the duties payable on the importation of any articles in British or American vessels."

This is a demonstration that the treaty contemplates, as consistent with it, a continuance of the present difference of duties on importations in American and British vessels; and consequently, that the third article, which stipulates equal duties, as to the cases within it, does not extend to importations into our Atlantic ports, but is confined to importations by land and inland navigation. Though this article be of temporary duration, yet as an evidence of the sense of the parties, it will always serve as a rule of construction for every part of the instrument.

These different views of the article establish, beyond the possibility of doubt, that, except with regard to the Mississippi, inland trade and navigation are its sole objects—that it grants no right or privilege whatever in our Atlantic ports,—and that with regard to the ports of the Mississippi, it only establishes this principle: that Great Britain shall always enjoy there the same privileges which by treaty or law she is allowed to have in our Atlantic ports.

I remark incidentally, for a purpose which will appear hereafter, that as far as this article is con-

cerned, we are free to prohibit the importation into the United States at large, of any British article whatever, though we cannot prohibit its importation *partially*—that is, merely from her territories in our neighborhood, by land or inland navigation; but we may prohibit the importation by sea from those territories; *nor is there any other part of the treaty by which this is prevented.*

The remaining clauses of this article establish the following points: "That no duty of entry shall be levied by either party on peltries brought by land or inland navigation, into the respective territories"; that Indians, passing and repassing with their own goods, shall pay no impost or duty upon them, but goods in bales, or other large packages, unusual among Indians, shall not be considered as their goods; that tolls and rates of ferriage shall be the same on both sides as are paid by natives; that no duties shall be paid by either party on the mere transit of goods across portages and carrying-places from one part to another of the territory of the same party; that the respective governments will promote friendship, good neighborhood, and amicable intercourse, by causing speedy and impartial justice to be done, and necessary protection to be extended to all who may be concerned therein.

I shall conclude this paper with an observation or two on the meaning of the terms, inland navigation. These terms have no technical meaning defined in the laws of either country, nor have they any precise meaning assigned by the law of nations. They, however, *ex vi termini*, exclude navigation from the

sea; and as a general rule, I should say, that inland navigation begins there where sea navigation ends. Where is this? I answer, at the ports of entry from the sea. By the laws of Great Britain and of the United States, all rivers are arms of the sea as far as the tides flow. It would be a consequence of this principle, that sea navigation would reach to the head of tide-water. But some more obvious and notorious rule ought to govern the interpretation of national compacts. The ports of entry from the sea are conceived to be the proper rule.

In the case under consideration, the general spirit of the article may require, that all the waters which divide the territories of the parties should be in their whole extent common to both. As to other communicating waters, accessible under the article, the reciprocal limit of the right will be the ports of entry from the sea. This is to be understood with the exception of the Mississippi, to the ports of which, access from the sea is granted under the qualification which has been pointed out.

CAMILLUS.

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## NO. XI

1795.

The foregoing analysis of the third article, by fixing its true meaning, enables us to detect some gross errors, which have been principal sources of prejudice against it. One of these is, that the article gives to the other party a right of access to all our ports, while it excludes us from the ports of the

British territories in our neighborhood. It has been clearly shown that it gives no right of access to any one of our Atlantic ports, and that it gives only a qualified and conditional access to the ports which we may have on the Mississippi, to be regulated by the privileges at any time allowed by law or compact in our Atlantic ports, and liable to cease with the cessation of those privileges. The charge, therefore, of want of reciprocity in this particular, vanishes, and with it all the exceptionable consequences which have been the fruit of the error. Such is the assertion of DECIUS, that a British trader may set out from Canada, traverse our lakes, rivers, and waters to New York, and thence to Philadelphia, while we are precluded from the navigation of the St. Lawrence, and other British rivers lower than the highest ports of entry from the sea. It would be an indulgent construction of the article, not to stop the British trader at Hudson, as the highest port of entry from the sea, and the boundary of inland navigation; but he could certainly have no claim of right under it, to go from New York to Philadelphia, because he must necessarily go by sea to arrive at the first place, and no such permission is stipulated by the article. Such, also, is the assertion of CATO, that Great Britain is admitted to all the advantages of which our Atlantic rivers are susceptible. The rivers, upon which no part of their territory borders, and which their vessels can only approach by sea, are certainly excepted.

Another of the errors referred to is this, that goods and merchandise may, under this article, be

imported into any *part* of the United States upon the same duties which are now payable when imported by citizens of the United States and in vessels of the United States. It has been clearly proved that there is no pretence for this position, and that equality of duties only applies to importations from the British territories, in our neighborhood, by land and inland navigation.

Cato, Decius, and other writers against the treaty have fallen into this strange error, and have founded upon it much angry declamation. The first, however, embarrassed in his construction by the provision which reserves to Great Britain the right of laying countervailing duties, endeavors to escape from it by distinguishing goods imported for the Indian trade and those imported for other uses. Whatever may be the case with regard to the latter, the former, he is convinced, are certainly entitled to admission into our Atlantic ports on the privileged rights of duty, though he is very naturally perplexed to see how the discrimination could be maintained in practice. But where does he find room for this distinction? Not in the provision respecting countervailing duties, for that is general—not in the clause of the third article, to which he gives the interpretation, for that is directly against his distinction. The goods and merchandise, for the privileged importation of which it provides, are restricted to no particular object—have no special reference to Indian more than to other trade: on the contrary, they are expressly to be imported for "the purposes of commerce" at large; so that in the cases in which

they are privileged, they are equally so, whether it be for a trade with our citizens or with Indians. The distinction, therefore, only proves the embarrassment of its inventor, without solving the difficulty. A curious assertion has been made on this article of duties. It has been said that, while we are obliged to admit British goods on the same duties with those paid by our own citizens, or importation in our own vessels, Great Britain, under the right to lay countervailing duties, may incumber us with an additional ten per cent. Can any thing be more absurd than the position that the right to lay *countervailing* duties exists in a case where there is no difference of duty to *countervail?* The term is manifestly a relative one, and can only operate where there is something on our side to be countervailed or counterbalanced, and in an exact ratio to it. If it be true that a very high law character is the writer of CATO, we cannot but be surprised at such extreme inaccuracy.

Other errors, no less considerable, will appear in the progress of the examination; but it will facilitate the detection of these, and tend to a more thorough understanding of the article, to state in this place some general facts, which are material in a comparison of the advantages and disadvantages of the article, to the respective parties.

1st. The fur trade within our limits is to the fur trade within the British limits as one to seven, nearly —that is, the trade with the Indians on the British side of the boundary line is about seven times greater than the same trade on our side of that line. This

fact is stated as the result of repeated inquiry from well-informed persons for several years past. It will not appear extraordinary to those who recollect how much the Indians on our side are circumscribed in their hunting-grounds, and to what a degree they are reduced in numbers by the frequent wars in which they have been engaged with us; while the tribes on the British side of the line are not only far more numerous, but enjoy an immense undisturbed range of wilderness. The more rapid progress of settlement on our side than on the other will fast increase the existing disparity.

2d. Our communication with the sea is more easy, safe, and expeditious than that of Canada by the St. Lawrence. Accordingly, while our vessels ordinarily make two voyages in a year, to and from Europe, the British vessels, in the Canada trade, are, from the course of the seasons and the nature of the navigation, confined to one voyage in a year. Though hitherto, from temporary circumstances, this difference has not made any sensible difference in the price of transportation; yet in its permanent operation it is hardly possible that it should not give us a material advantage in the competition for the supply of European goods to a large part of Canada, especially that which is denominated Upper Canada. The city of Hudson, distant 124 miles from the city of New York, is as near to the junction of the river Cataraquy and Lake Ontario as Montreal, which last is near 400 miles distant from the mouth of the St. Lawrence. When the canals now in rapid execution are completed there will be a water com-

munication the whole way from the city of Hudson to Ontario.

3d. The supply of East India goods to Canada, is likely to be always easier and cheaper through us, than in any other way. According to the present British system, Canada is supplied through Britain. It is obvious how much the charges of this double voyage must enhance the prices of the articles, when delivered in Canada. A direct trade between the East Indies and Canada would suppose a change in the British system, to which there are great obstacles; and even then, there are circumstances which would secure to us an advantageous competition. It is a fact which serves to illustrate our advantages, that East India articles, including teas, are, upon an average, cheaper in the United States than in England.

The facts demonstrate that a trade between us and the British territories in our neighborhood, upon equal terms as to privilege, must afford a balance of advantages on our side. As to the fur trade, for a participation in one eighth of the whole, which we concede, we gain a participation in seven eighths, which is conceded to us. As to the European and East India trade, we acquire the right of competition upon equal terms of privilege, with real and considerable advantages of situation.

The stipulation with regard to equal duties was essential to the preservation of our superiority of advantages in this trade, while it would not interfere with the general policy of our regulation concerning the difference of duties on goods imported in our own

and in foreign bottoms; because the supplies which can come to us through Canada, for the reasons already given, must be inconsiderable; because, also, distance would soon countervail, in expenses of transportation, the effect of the difference of duties in our market; and because, in the last place, this difference is not very sensible, owing to the large proportion of goods which are imported in the names of our own citizens. I say nothing here of the practicability, on general grounds, of long maintaining with effect this regulation.

Is it not wonderful, considering the real state of the trade, as depending on locality, that the treaty should be charged with sacrificing the fur trade to the British? If there be any sacrifice, is it not on their side; when the fact is that the quantity of trade in which they admit us to equal privileges is seven times greater than that in which we admit them to equal privileges?

The arguments against the treaty on this point are not only full of falsity, but they are in contradiction with each other.

On the one hand it is argued that our communication from the sea, with the Indian country, being much easier than by the St. Lawrence, we could furnish English goods cheaper, and of course could have continued the Indian trade in its usual channel, even from the British side of the lakes; nor could they have prevented it without giving such disgust to the Indians, as would have made them dangerous neighbors. On the other hand, it is argued that from superiority of capital, better knowledge of the trade,

a better established connection of customers, the British will be able to supplant us, even in our own territories, and to acquire a monopoly of the whole fur trade.

Propositions so opposite cannot all be true. Either the supposed faculty of supplying English goods cheaper, which, it is said, would give us a command of the Indian trade, even on the British side of the lakes, not in the power of the British to prevent, overbalances the advantages which are specified on the other side, or it does not. If it does not, then it is not true that it could draw to us the trade from the British side of the lakes. If it does then it is not true that the British can supplant us in the trade on either side of the lakes; much less that they can obtain a monopoly of it on both sides.

Besides, if it be true that the British could not prevent our trading with the Indians on their side, without giving them such disgust as to make them dangerous to their neighbors, why is it not equally true, that we could not prevent their trading with the Indians on our side, without producing a similar effect? And if they have really a superiority of advantages, why would they not, on the principle of this argument, attract and divert the trade from us, though a mutual right to trade with the Indians in each other's territories had not been stipulated?

The difficulty of restraining the Indians from trading at pleasure, is an idea well founded, as has been admitted in another place. But there result from it strong arguments in favor of reciprocation of privileges in the Indian trade, by treaty. One of

them, its tendency to preserve peace and good understanding, has been already noticed; another arises from the consideration, that it will probably be the policy of the British to maintain larger military establishments on their frontier than we shall think eligible on ours, which will render it proportionably more easy to them to restrain their Indians, than it will be to us to restrain ours. This greater difficulty of executing restraints on our side, is a powerful reason for us to agree, mutually, to throw open the door.

It will not be surprising if, upon some other occasion, the adversaries of the treaty should abandon their own ground, and instead of saying the treaty is faulty, for what it stipulates on this point, should affirm merely that it has no merit on this account, since it only does what the disposition of the Indians would have brought about without it. But it is always a merit to divest an advantageous thing of cause of dispute, and to fix, by amicable agreement, a benefit which otherwise would be liable to litigation, opposition, and interruption.

As to relative advantages for carrying on trade, the comparison ought to be made with caution. That which has been stated on our side, namely, greater facility in conveying the materials of the trade from Europe to the scene where it is to be carried on, is a real one, and in process of time may be expected to make itself to be felt; yet hitherto, as before observed, it has had no sensible effect.

Of the advantages which have been stated as belonging to the other side, there is but one which has

substance, and this is previous possession of the ground. But even this, from the very nature of it, is temporary. With our usual enterprise and industry, it will be astonishing if we do not speedily share the ground to the full extent of our relative advantages.

As to superiority of capital, it amounts to nothing It has been seen that the capital requisite for the whole trade is small. From a hundred to a hundred and fifty thousand pounds sterling would be a high statement. The whole of this, if we were to monopolize the entire trade, could not create a moment's embarrassment to find it, in the opinion of any man who attends to the great pecuniary operations which are daily going on in our country. But that very capital which is represented as our rival, could be brought into action for our benefit in this very trade. The solution is simple. Our credit will command it in obtaining the foreign articles necessary for the trade, upon as good terms as the British merchants who now carry it on. The same objection of superiority of capital may with as much reason be applied to any other branch of trade between us and Great Britain. Why does it not give her a monopoly of the direct trade between her European dominions and the United States? The argument, if valid, would prove that we ought to have no commerce, not only with Great Britain, but with any nation which has more commercial capital than ourselves.

As to superior knowledge of the particular branch of business, there is still less force in that argument. It is not a case of abstruse science or complicated

combination. And we are in no want of persons among us who are experimentally acquainted with the subject.

As to customers for the proceeds of the trade, we should stand upon as good a footing as the British merchants. What we did not want for our own consumption, might be sent upon equal terms to the very markets to which they send theirs; and to others which might be found preferable, because less well supplied with the kind of articles.

As to whatever may depend on enterprise, we need not fear to be outdone by any people on earth. It may almost be said, that enterprise is our element.

It has been alleged that our trade with the Indians would be interrupted by bad seasons and occasional wars, while that of Great Britain would be steady and uniform. As to the casualties of seasons, it is evident they must fall upon Great Britain as much as upon us, unless we suppose the elements in conspiracy against us; and as to wars, the possession of the posts would essentially change our situation, and render it peculiarly advantageous for preventing or repressing hostilities; so that with equally good management, our territories would not be more exposed than the British.

But the intrigues of the British traders residing among our Indians, would excite them to hostility. It could not be the private interest of the traders to do this; because, besides being amenable to punishment, if discovered,—besides that both the traders and the Indians within our limits, by the possession of the posts, would be under our control—wars in-

terrupt, of course, the hunting of the Indians, and so destroy their means of trading.

As to Great Britain, she never could have had but one interest to prompt Indian hostilities—that was, to induce the United States to relinquish a part of their boundary. The restitution of the posts will put an end to this project. In regard to trade, she and her traders will have a common interest with us, and our traders, to keep all the Indians at peace, for the reason assigned above. This interest will be the stronger, because the best communication even with her own Indians, will be partly through our territory; and it would be impossible that it should not be impeded and interrupted by the operations of war between us and the Indians. In fact, under the circumstance of common privileges, there is every possible link of common interest between us and Great Britain in the preservation of peace with the Indians.

In this question of danger to our peace by the British participation in the trade with our Indians, the difficulty of restraining the Indians from trading with whom they please (which is admitted by the argument of both sides) is a very material consideration. Would there not be greater hazard to our peace from the attempts of the British to participate in a trade from which we endeavored to exclude them, seconded by the discontents of the Indians, than from any dispositions to supplant us, when allowed a free competition, when no cause of dissatisfaction was given to the Indians, and when it was certain, that war must interfere with their means of carrying on the trade? The security for

our peace appears to be much greater in the latter than in the former state of things.

A suspicion is also suggested, that Great Britain, without exciting war, will indirectly trammel and obstruct our trade. To objections which suppose a want of fair dealing in the other party, it is very difficult to answer. All that a treaty can do, is to establish principles which are likely to operate well, if well executed. It is no objection to its merits, that the benefits aimed at may be frustrated by ill faith. The utility of any compact between nations must presume a sincere execution. The reverse may disappoint the best-conceived plan; and the security against it must be the mutual interest to perform, and the power of retaliation. If Great Britain acts with infidelity or chicanery towards us, we must retract the privileges granted on our side.

Another objection which is made, is, that while the British would have a right to reside among us, to hire houses and warehouses, and to enjoy every convenience for prosecuting the trade systematically, we should not be entitled to similar privileges with them, having only a right to pass "like pedlars with our shops upon our backs." These are the expressions of Cato.

The position is founded on that clause of the British act of navigation, which forbids any but a natural-born or naturalized subject to exercise the occupation of a merchant or factor, in any of the British dominions in Asia, Africa, and America.

In the first place, it is to be observed, that as far

as the article under discussion is singly concerned, there is no pretence to say that one party has greater rights as to residence than the other. If, therefore, Great Britain can prevent our citizens residing in their territories in our neighborhood, we are free by this article to apply to them a similar exclusion. And any right of residence which may be claimed under any other part of the treaty, will be temporary.

In the second place, the prohibition of residence in the act of navigation, proceeds on the ground of excluding foreigners from carrying on trade in the territories to which it extends. But the third article expressly gives us a right freely to carry on trade and commerce with the British territories on this continent, a right which necessarily includes the privilege of residing as merchants and factors. For wherever an END is granted, the *usual* and *proper means* of enjoying it are implied in the grant. Residence is a usual and necessary means of freely carrying on trade. Without it, the right of trade becomes essentially nugatory. This reasoning has peculiar force in relation to inland trade. And it agrees with decisions at common law, and with the opinion of Lord Coke, who tells us that "of a house for *habitation* an alien merchant may take a *lease for years, as incident to commerce; for without habitation he cannot merchandise or trade.*" This, among other things, he informs us, was resolved by all the judges assembled for that purpose, in the case of Sir James Croft, in the reign of Queen Elizabeth; and we learn from it that the right to hire houses and warehouses is

derived from the right to trade, as its incident. The same principle, *in toto*, has been recognized in other cases.

The whole of the article is an innovation upon the British act of navigation. Being abrogated as to the principal thing, there is no difficulty in supposing it so as to incidents; on the other hand, to pretend to exclude us from the right of residence, could not be deemed a fair execution of the article. Hence we find, that the want of reciprocity in this particular also fails, and with it the supposed disadvantage on our side in the supposed competition for the trade.

CAMILLUS.

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### NO. XII

1795.

The remaining allegations in disparagement of the third article, are to this effect: 1. That the exception of the country of the Hudson's Bay company, owing to its undefined limits, renders the stipulations in our favor, in a great measure, nugatory. 2. That the privileges granted to Great Britain in our Mississippi ports, are impolitic, because without reciprocity. 3. That the agreement to forbear to lay duties of entry on peltries, is the surrender, without equivalent, of a valuable item of revenue, and will give the British the facility of carrying on their fur trade through us, with the use of our advantages. 4. That the articles which will be brought from Europe into Canada coming duty free, can be afforded cheaper than

the same articles going thither from us charged with a heavy duty on their importation into the United States, and with the expense of a long transportation by land, and inland navigation. 5. That the population of Canada, which, by a census of 1784, amounted only to 123,082 souls, is too small to render the supply of European and Asiatic commodities, through us, of so much importance as to bear any comparison with the loss by the sacrifice of the fur trade. 6. That the intercourse to be permitted with the British territories, will facilitate smuggling to the injury of our revenue. 7. That the much greater extent of the United States than of the British territories destroys real reciprocity in the privileges granted by this article, giving, in fact, far greater advantages than are received. These suggestions will be discussed in the order in which they are here stated.

1. It is true, that the country of the Hudson's Bay company is not well defined. Their charter, granted in 1670, gives them "the sole trade and commerce of and to all the seas, bays, straights, creeks, lakes, rivers, and sounds, in whatsoever latitude they shall be, that lie within the entrance of the streights commonly called Hudson's Streights, together with all the lands, countries, and territories, upon the coasts and confines of the said seas, straights, bays, etc., *which are now actually possessed by any of our subjects, or by the subjects of any other Christian prince or State.*"

To ascertain their territorial limits, according to charter, it would be necessary to know what portion

of country, at the time of the grant, was *actually possessed* by the subjects of Great Britain, or of some other Christian prince or State; but though this be not known, the general history of the country, as to settlement, will demonstrate that it could not have extended far westward, certainly not to that region which is the scene of trade in furs, commonly called the Northwest trade, carried on by the Canada company from Canada; the possession of which, as far as possession exists, is recent. We learn from a traveller who has lately visited that region, that one of this company's establishments is in lat. 56, 9, N. long. 117, 43, W., that is, about 20 degrees of longitude westward of the Lake of the Woods; and it is generally understood, that the entire scene of the trade of this company is westward of the limits of the Hudson's Bay company.

Canada, on the north, is bounded by the territories of the Hudson's Bay company. This is admitted by the treaty of Utrecht, and established by the act of parliament in 1774, commonly called the Quebec act. The treaty of Utrecht provides for the settlement of the boundaries by commissioners. I have not been able to trace whether the line was ever actually so settled; but several maps lay down a line as the one settled by the treaty of Utrecht, which runs north of the Lake of the Woods.

In a case thus situated, the United States will justly claim, under the article, access to all that country the trade of which is now carried on through Canada. This will result both from the certainty that there were no actual possessions at the date of

the charter so far interior, and from the fact of the trade being carried on through a different channel, by a different company, under the superintendence and protection of a different government, that of Canada. It may be asked, Why was the article embarrassed by the exception of the country of the Hudson's Bay company? The answer is this, That the charter of this company gives to it a monopoly within its limits, and, therefore, a right to trade there could not have been granted, with propriety, to a foreign power, by treaty. It is true that it has been questioned whether this monopoly was valid against British subjects, seeing that the charter had not been confirmed by acts of parliament. But besides that this doubt has been confined to British subjects, it would appear, that, in fact, the company has enjoyed the monopoly granted by its charter, even against them, and with at least the implied approbation of parliament. In the year 1749, petitions were preferred to the House of Commons, by different trading towns in England, for rescinding the monopoly and opening the trade. An inquiry was instituted by the House. The report of its committee was favorable to the conduct and pretensions of the company, and against the expediency of opening the trade; and the business terminated there.

This circumstance of there being a monopoly, confirms the argument drawn from the fact, that the Northwest trade is carried on through Canada by the Canada company; a decisive presumption, that the scene of that trade is not within the country

of the Hudson's Bay company, and is, consequently, within the operation of the privilege granted to us.

Though it will be partly a digression, I cannot forbear, in this place, to notice some observations of Cato, in his 10th number. After stating, that in 1784 the peltry from Canada sold in London for £230,000 sterling, he proceeds to observe that, excluding the territories of the Hudson's Bay company, nine tenths of this trade is within the limits of the United States; and, though with studied ambiguity of expression, he endeavors to have it understood that nine tenths of the trade which yielded the peltry that sold for £230,000 sterling in 1784, was within our territories. It is natural to ask, how he has ascertained the limits of the Hudson's Bay company (which at other times is asserted, by way of objection to the article, to be altogether indefinite) with so much exactness as to be able to pronounce what proportion, if any, of the trade carried on through Canada may have come from that country, towards the calculation which has led to the conclusion that nine tenths of the whole lies within our limits? The truth is indubitably and notoriously, that whether any or whatever part of the peltry exported from Canada may come from the country of the Hudson's Bay company, seven eighths [1] of the whole trade which furnishes that peltry, has its source on the British side of the boundary line. It follows, that if it were even true that only one tenth of the whole lay in that part of the British territory which is not of the Hudson's Bay's company, inasmuch as only

[1] Some statements rate it between six eighths and seven eighths.

one seventh of it lies within our limits, the result would be, that the trade, in which we granted an equal privilege, was to that in which a like privilege is granted to us, as one seventh to one tenth, and not, according to Cato, as nine to one. This legerdemain in argument and calculation, is really too frivolous for so serious a subject. Or, to speak more properly, it is too shocking, by the spirit of deception which it betrays. Cato has a further observation with regard to the trade with the Indians in the vicinity of the Mississippi, and from that river into the Spanish territories. The product of all this trade, he says, must go down the Mississippi, and, but for the stipulation of the third article, would have been exclusively ours; because, "by the treaty of Paris, though the British might navigate the Mississippi, yet they did not own a foot of land upon either of its banks; whereas the United States possessing all the Indian country in the vicinity of that river and the east bank for many hundred miles, could, when they pleased, establish factories and monopolize that commerce." This assertion, with regard to the treaty of Paris, is in every sense incorrect; for the seventh article of that treaty, establishes as a boundary between the dominions of France and his Britannic Majesty, "a line drawn along the middle of the river Mississippi, from its source to the river Iberville, and from thence by a line drawn along the middle of this river and the lakes Maurepas and Pontchartrain to the sea," and cedes to his Britannic Majesty all the country on the east side of the Mississippi. By the treaty of Paris

then, his Britannic Majesty owned all the territory, except the town and island of New Orleans, on the east side of the Mississippi, instead of not having a foot of land there.

What part of this territory does not still belong to him, is a point not yet settled. The treaty of peace between the United States and Great Britain, supposes that part will remain to Great Britain; for one line of boundary between us and her, designated by that treaty, is a line due west from the Lake of the Woods to the Mississippi. If, in fact, this river runs far enough north to be intersected by such a line, according to the supposition of the last-mentioned treaty, so much of that river, and the land upon it as shall be north of the line of intersection, will continue to be of the dominion of Great Britain. The lately-made treaty, not abandoning the possibility of this being the case, provides for a survey to ascertain the fact; and in every event, the intent of the treaty of peace will require, that some closing line, more or less direct, shall be drawn from the Lake of the Woods to the Mississippi. The position, therefore, that Great Britain had no land or ports on the Mississippi, takes for granted what is not ascertained, and of which the contrary is presumed by the treaty of peace.

The trade with the Indian country on our side of the Mississippi, from the Ohio to the Lake of the Woods (if that river extends so far north), some fragments excepted, has its present direction through Detroit and Michilimackinac, and is included in many calculations, heretofore stated, of the propor-

tion which the Indian trade within our limits, bears to that within the British limits. Its estimated amount is even understood to embrace the proceeds of a clandestine trade with the Spanish territories; so that the new scene suddenly explored by Cato is old and trodden ground, the special reference to which cannot vary the results that have been presented. It is still unquestionably and notoriously true that the fur trade within our limits bears no proportion to that within the British limits. As to a contingent traffic with the territories of Spain, each party will be free to pursue it according to right and opportunity; each would have, independent of the treaty, the facility of bordering territories. The geography of the best regions of the fur trade in the Spanish territories is too little known to be much reasoned upon; and if the Spaniards, according to their usual policy, incline to exclude their neighbors, their precautions along the Mississippi will render the access to it circuitous—a circumstance which makes it problematical, whether the possession of the opposite bank is, as to that object, an advantage or not, and whether we may not find it convenient to be able, under the treaty, to take a circuit through the British territories.

2. It is upon the suggestion of Great Britain having no ports on the Mississippi, that the charge of want of reciprocity in the privileges granted with regard to the use of that river, is founded. The suggestion has been shown to be more peremptory than is justified by facts. Yet it is still true that the ports on our side bear no proportion to any that can

exist on the part of the British, according to the present state of territory. It will be examined, in a subsequent place, how far this disproportion is a proper rule in the estimate of reciprocity. But let it be observed, in the meantime, that in judging of the reciprocity of an article, it is to be taken collectively. If, upon the whole, the privileges obtained are as valuable as those granted, there is a substantial reciprocity; and to this test, upon full and fair examination of the article, I freely refer the decision. Besides, if the situation of Great Britain did not permit, in this particular, a precise equivalent, it will not follow that the grant on our part was improper, unless it can be shown that it was attended with some inconvenience, injury, or loss to us; a thing which has not been, and I believe cannot be shown. Perhaps there is a very importantly beneficial side to this question. The treaty of peace established between us and Great Britain, a common interest in the Mississippi; the present treaty strengthens that common interest. Every body knows that the use of the river is denied to us by Spain, and that it is an indispensable outlet to our western country. Is it an inconvenient thing to us that the interest of Great Britain has, in this particular, been more completely separated from that of Spain and more closely connected with ours?

3. The agreement to forbear to lay duties of entry on peltries is completely defensible on the following grounds, viz.: It is the general policy of commercial nations to exempt raw materials from duty. This has likewise been the uniform policy of the United

States; and it has particularly embraced the article of *peltries*, which, by our existing laws, may be imported into any part of the United States *free from duty*. The object of this regulation is the encouragement of manufactures, by facilitating a cheap supply of raw materials. A duty of entry, therefore, as to such part of the article as might be worked up at home would be prejudicial to our manufacturing interest; as to such parts as might be exported, if the duty was not drawn back, it would injure our commercial interest. But it is the general policy of our laws, in conformity with the practice of other commercial countries, to draw back and return the duties which are charged upon the importation of foreign commodities. This has reference to the advancement of the export trade of the country; so that, with regard to such peltries as should be re-exported, there would be no advantage to our revenue from having laid a duty of entry. Such a duty, then, being contrary to our established system and to true principles, there can be no objection to a stipulation against it. As to its having the effect of making our country the channel of the British trade in peltries, this, if true, and it is indeed probable, could not but promote our interest. A large proportion of the profits would then necessarily remain with us, to compensate for transportation and agencies. It is likely, too, that to secure the fidelity of agents, as is usual, copartnerships would be formed, of which British capital would be the principal instrument, and which would throw a still greater proportion of the profits into our hands. The more we can make

our country the *entrepôt*, the emporium of the trade of foreigners, the more we shall profit. There is no commercial principle more obvious than this, more universally agreed, or more generally practised upon, in countries where commerce is well understood.

4. The fourth of the above-enumerated suggestions is answered, in its principal point, by the practice just stated, of drawing back the duties on importation, when articles are re-exported. This would place the articles, which we should send into the British territories, exactly upon the same footing, as to duties, with the same articles imported there from Europe. With regard to the additional expense of transportation, this is another instance of the contradiction of an argument, which has been relied upon by both sides, which is, that taking the voyage from Europe in conjunction with the interior transportation, the advantage, upon the whole, is likely to be in our favor. And it is upon this aggregate transportation that the calculation ought to be made. With respect to India or Asiatic articles, there is the circumstance of a double voyage.

5. As to the small population of Canada, which is urged to depreciate the advantages of the trade with the white inhabitants of those countries, it is to be observed that this population is not stationary. If the date of the census be rightly quoted, it was taken eleven years ago, when there were already 123,082 souls. It is presumable that this number will soon be doubled; for it is notorious that settlement has proceeded for some years with considerable rapidity in Upper Canada; and there is no reason to believe

that the future progress will be slow. In time to come the trade may grow into real magnitude; but be it more or less beneficial, it is so much gained by the article; and so much clear gain, since it has been shown not to be true that it is counterbalanced by a sacrifice in the fur trade.

6. With regard to the supposed danger of smuggling, in the intercourse permitted by this article, it is very probable it will be found less than if it were prohibited. Entirely to prevent trade between bordering territories is a very arduous, perhaps an impracticable, task. If not authorized, so much as is carried on must be illicit; and it may be reasonably presumed that the extent of illicit trade will be much greater in that case than where an intercourse is permitted under the usual regulations and guards. In the last case the inducement to it is less, and such as will only influence persons of little character or principle, while every fair trader is, from private interest, a sentinel to the laws; in the other case, all are interested to break through the barriers of a rigorous and apparently unkind prohibition. This consideration has probably had its weight with our government in opening a communication through Lake Champlain with Canada, of the principle of which regulation the treaty is only an extension.

7. The pretended inequality of the article, as arising from the greater extent of the United States than of the British territories, is one of those fanciful positions which are so apt to haunt the brains of visionary politicians. Traced through all its consequences, it would terminate in this, that a great empire could

never form a treaty of commerce with a small one; for, to equalize advantages according to the scale of territory, the small state must compensate for its deficiency in extent by a greater *quantum* of positive privilege, in proportion to the difference of extent, which would give the larger State the monopoly of its trade. According to this principle, what wretched treaties have we made with France, Sweden, Prussia, and Holland! For our territories exceed in extent those of either of these Powers. How immense the sacrifice in the case of Holland! for the United States are one hundred times larger than the United Provinces.

But how are we sure that the extent of the United States is greater than the territories of Great Britain on our continent? We know that she has pretensions to extend to the Pacific Ocean, and to embrace a vast wilderness, incomparably larger than the United States, and we are told, as already mentioned, that her trading establishments now actually extend beyond the 56th degree of north latitude, and 117th degree of west longitude.

Shall we be told (shifting the original ground) that not extent of territory, but extent of population, is the measure? Then how great is the advantage which we gain in this particular by the treaty at large? The population of Great Britain is to that of the United States about two and a half to one, and the comparative concession by her in the trade between her European dominions and the United States must be in the same ratio. When we add to this the great population of her East India posses-

sions, in which privileges are granted to us, without any return, how prodigiously will the value of the treaty be enhanced, according to this new and extraordinary rule?

But the rule is, in fact, an absurd one, and only merits the notice which has been taken of it to exhibit the weak grounds of the opposition to the treaty. The great standard of reciprocity is equal privilege. The adventitious circumstances, which may render it more beneficial to one party than the other, can seldom be taken into the account, because they can seldom be estimated with certainty; the relative extent of country or population is, of all others, a most fallacious guide.

The comparative resources and facilities for mutual supply, regulate the relative utility of a commercial privilege; and as far as population is concerned, it may be laid down, as a general rule, that the smallest population graduates the scale of the trade on both sides, since it is at once the principal measure of what the smaller State can furnish to the greater, and of what it can take from the greater; or, in other words, of what the greater State can find a demand for in the smaller State. But this rule, too, like most general ones, admits of numerous exceptions.

In case of a trade by land and inland navigation, the sphere of the operation of any privilege can only extend a certain distance. When the distance to a given point, through a particular channel, is such that the expense of transportation would render an article dearer than it could be brought through

another channel to the same point, the privilege to carry the article through that particular channel to such point becomes of no avail. Thus the privilege of trading by land or inland navigation from the British territories on this continent can procure to that country no advantage of trade with Princeton in New Jersey, because supplies can come to it on better terms from other quarters. Whence we perceive, that the absolute extent of territory or population of the United States is no measure of the relative value of the privileges reciprocally granted by the article under consideration, and, consequently, no criterion of the real reciprocity of the article.

The objectors to the treaty have marshalled against this article a quaint figure, of which, from the use of it in different quarters, it is presumable they are not a little enamoured; it is this, that the article enables Great Britain to draw *a line of circumvallation* round the United States. They hope to excite prejudice by presenting to the mind the image of a siege, or investment of the country. If trade be war, they have chosen a most apt figure; and we cannot but wonder how the unfortunate island of Great Britain has been able so long to maintain her independence amidst the beleaguering efforts of the number of nations with whom she has been imprudent enough to form treaties of commerce; and who, from her insular situation, have it in their power to beset and hem her in on all sides. How lucky it is for the United States, that at least one side is covered by Spain, and that this formidable line of circumvallation cannot be completely

perfected! or rather how hard driven must those be who are obliged to call to their aid auxiliaries so preposterous!

Can any good reason be given why one side of a country should not be accessible to foreigners, for purposes of trade, equally with another? Might not the cultivators on the side from which they were excluded, have cause to complain that the carriage of their productions was subject to an increased charge, by a monopoly of the national navigation; while the cultivators in other quarters enjoyed the benefit of a competition between that and foreign navigation? And might not all the inhabitants have a right to demand a reason, why their commerce should be less open and free, than that of other parts of the country? Will privileges of trade extend the line of territorial circumvallation? Will not the extent of contiguous British territory remain the same, whether the communications of trade are open or shut? By opening them may we not rather be said to make so many breaches in the wall, or intrenchment of this newly-invented circumvallation? if indeed it be not enchanted!

The argument upon this article has hitherto turned, as to the trade with the white inhabitants of the British territories, on European and East India goods. But there can be no doubt that a mutually-beneficial commerce in native commodities ought to be included in the catalogue of advantages. Already there is a useful interchange of certain commodities, which time and the progress of settlement and resources cannot fail to extend. It

is most probable, too, that a considerable part of the productions of the British territories will find the most convenient channel to foreign markets through us; which, as far as it regards the interest of external commerce, will yield little less advantage than if they proceeded from our own soil or industry. It is evident, in particular, that as far as this shall be the case, it will prevent a great part of the competition with our commodities which would exist if those productions took other routes to foreign markets.

In considering the subject, on the side of a trade in home commodities, it is an important reflection that the United States are much more advanced in industrial improvement than the British territories. This will give us a material and growing advantage. While their articles of exchange with us will essentially consist in the products of agriculture and of mines, we shall add to these manufactures of various and multiplying kinds, serving to increase the balance in our favor.

In proportion as the article is viewed on an enlarged plan and permanent scale, its importance to us magnifies. Who can say how far British colonization may spread southward and down the west side of the Mississippi, northward and westward into the vast interior regions towards the Pacific Ocean? Can we view it as a matter of indifference, that this new world eventually is laid open to our enterprise, to an enterprise seconded by the immense advantage already mentioned, of a more improved state of industry? Can we be insensible that the precedent furnishes us with a cogent and

persuasive argument to bring Spain to a similar arrangement? And can we be blind to the great interest we have in obtaining a free communication with all the territories that environ our country, from the St. Mary's to the St. Croix?

In this large view of the subject, the fur trade which has made a very prominent figure in the discussion, becomes a point scarcely visible. Objects of great variety and magnitude start up in perspective, eclipsing the little atoms of the day, and promising to grow and mature with time.

The result of the whole is, that the United States make, by the third article of the treaty, a good bargain; that with regard to the fur trade, with equality of privileges and superior advantages of situation, we stake one against seven, or at most one against six; that as to the trade in European and East Indian goods and in home productions, we make an equal stake with some advantages of situation; that we open an immense field of future enterprise; that we avoid embarrassments and dangers ever attendant on an artificial and prohibitory policy, which, in reference to the Indian nations, was particularly difficult and hazardous; and that we secure those of a natural and liberal policy, and give the fairest chances for good neighborhood between the United States and the bordering British territories, and consequently of good understanding with Great Britain, conducing to the security of our peace. Experience, no doubt, will demonstrate that the horrid spectres which have been conjured up are fictions; and if it should even be slow to realize the

predicted benefits,—for time will be requisite to give permanent causes their due effect in controlling temporary circumstances—it will at last prove that the predicted evils are chimeras and cheats.

CAMILLUS.

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## NO. XIII

1795.

The fourth and fifth articles of the treaty, from similarity of object, will naturally be considered together. The fourth, reciting a doubt, "whether the river Mississippi extends so far northwestward as to be intersected by a line drawn due west from the Lake of the Woods, in the manner mentioned by the treaty of peace," agrees that measures shall be taken in concert between the two governments, to make a joint survey of that river, from a degree of latitude below the falls of St. Anthony, to the principal source or sources thereof, and of the parts adjacent thereto; and that if in the result it should appear that the said river would not be intersected by such a line as above mentioned, the two parties will proceed by amicable negotiation to regulate the boundary line in that quarter, as well as all other points to be adjusted between them, according to justice and mutual convenience, and the intent of the treaty of peace. The fifth, reciting that doubts have arisen, what river was truly intended under the name of the river St. Croix, mentioned in the treaty of peace, and forming a part of the boundary therein described, provides that the ascertainment

of the point shall be referred to three commissioners, to be appointed thus: One to be named by his Britannic Majesty, another by the President of the United States, with the advice and consent of the Senate, the third by these two, if they can agree in the choice; but if they cannot agree, then each of them to name a person, and out of the persons named, one drawn by lot in their presence to be the third commissioner. These commissioners are to meet at Halifax, with power to adjourn to any place or places they may think proper; are to be sworn to examine and decide the question according to the evidence which shall be laid before them by both parties; and are to pronounce their decision, which is to be conclusive, by a written declaration under their hands and seals, containing a description of the river, and particularly the latitude and longitude of its mouth and of its source.

These articles, though they have been adjusted with critical propriety, have not escaped censure. They have even in one instance been severely reprobated, as bringing into question things about which there was no room for any—and which a bare inspection of the map was sufficient to settle.

With regard to the Mississippi, there is no satisfactory evidence that it has ever been explored to its source. It is even asserted that it has never been ascended beyond the 45th degree of north latitude, about a degree above the falls of St. Anthony. Fadeus's map, in 1793, will serve as a specimen of the great uncertainty which attends this matter. It notes that the river had not been ascended beyond

the degree of latitude just mentioned, and exhibits three streams, one connected with the *Marshy Lake* in that latitude, another with the *White Bear Lake* near the 46th degree, and the third with the *Red Lake* in the 47th degree; denominating each of the two first, "the Mississippi by conjecture," and the last, "Red Lake River, or Lahontan's Mississippi," —all of them falling considerably short, in their northern extent, of the Lake of the Woods, which is placed as high as the 50th degree of north latitude. Thus stands this very clear and certain point, which, we are told, it was disgraceful on the part of our envoy to have suffered to be brought into question.

There is, however, a specific topic of blame of the article which has greater plausibility. It is this: that it does not finally settle the question, but refers the adjustment of the closing line to future negotiation, in case it should turn out that the river does not stretch far enough north to be intersected by an east and west line from the Lake of the Woods. I answer, that the arrangement is precisely such as it ought to have been. It would have been premature to provide a substitute till it was ascertained that it was necessary. This could only be done by an actual survey. A survey is therefore provided for, and will be made at the joint expense of the two countries.

That survey will not only determine whether a substitute be requisite or not, but it will furnish data for judging what substitute is proper and most conformable to the true intent of the treaty. Without the data which it will afford, any thing that could

have been done would have been too much a leap in the dark. National acts, especially on the important subject of boundary, ought to be bottomed on a competent knowledge of circumstances. It ought to be clearly understood how much is retained, how much is relinquished. Had our envoy proceeded on a different principle, if what he had agreed to had turned out well, it would have been regarded as the lucky result of an act of supererogation. If it had proved disadvantageous, it would have been stigmatized as an act of improvidence and imprudence.

The strong argument for having settled an alternative is the avoiding of future dispute. But what alternative could have been agreed upon, which might not have bred controversy? The closing line must go directly or indirectly to the Mississippi—which of the streams reputed or conjectured to be such, above the falls of St. Anthony, is best entitled to be so considered? To what known point was the line to be directed? How was that point to be identified with adequate certainty? The difficulty of answering these questions will evince that the danger of controversy might have been increased by an impatience to avoid it, and by anticipating, without the necessary lights, an adjustment which they ought to direct.

The facts with regard to the river St. Croix are these: the question is, which of two rivers is the true St. Croix? The dispute concerning it is as old as the French possession of Nova Scotia. France set up one river; Great Britain another. The point

was undecided when the surrender of Nova Scotia by the former to the latter put an end to the question as between those parties. It was afterward renewed between the colonies of Nova Scotia and Massachusetts Bay, which last, in the year 1762, appointed commissioners to ascertain, in conjunction with commissioners which might be appointed by the province of Nova Scotia, the true river, but no final settlement of the matter ensued.

The treaty of peace gives us for one boundary, the river St. Croix, but without designating it. Hence it has happened that not long after the peace was concluded, the question, which had been before agitated between France and Great Britain, and between the provinces of Massachusetts and Nova Scotia, was revived between the State of Massachusetts and that province, and it has ever since continued a subject of debate.

A mode of settling the dispute was under the consideration of Congress in the year 1785; and powers were given to our then Minister at the Court of London, to adjust the affair, but nothing was concluded. And we learn from a letter of Mr. Jefferson to Mr. Hammond, dated the 15th December, 1784, that it then also engaged the attention of our government; that the ascertaining of the point in dispute was deemed a matter of "present urgency," and that it had before been the subject of application from the United States to the Government of Great Britain.

It is natural to suppose, that a dispute of such antiquity between such different parties, is not with-

out colorable foundation on either side; at any rate, it was essential to the preservation of peace that it should be adjusted.

If one party could not convince the other by argument, of the superior solidity of its pretensions, I know of no alternative but arbitration or war. Will any one pretend that honor required us in such a case to go to war, or that the object was of a nature to make it our interest to refer it to that solemn, calamitous, and precarious issue? No rational man will answer this question in the affirmative. It follows, that an arbitration was the proper course, and that our envoy acted rightly in acceding to this expedient. It is one, too, not without precedent among nations, though it were to be wished, for the credit of human moderation, that it was more frequent.

Is there any good objection to the mode of the arbitration? It seems impossible that any one more convenient or fair could have been devised, and it is recommended by its analogy to what is common among individuals.

What the mode is, has been already detailed, and need not be repeated here. It is objected, that too much has been left to chance; but no substitute has been offered which would have been attended with less casuality. The fact is, that none such can be offered. Conscious of this, those who make the objection have not thought fit to give an opportunity of comparison by proposing a substitute. What is left to chance? Not that there shall be a final decision; for this is most effectually provided for. It

is not only positively stipulated that commissioners, with full and definitive power, shall be appointed, but an ultimate choice is secured, by referring, in the last resort, to a decision *by lot*, what it might not be practicable to decide by agreement. This is the *ne plus ultra* of precaution. Is it that this reference to lot leaves it too uncertain of what character or disposition the third commissioner may be? If this be not rather a recommendation of the fairness of the plan, how was it to be remedied? Could it have been expected of either of the parties, to leave the nomination to the other? Certainly not. Would it have been advisable to have referred the ultimate choice to some other state or government? Where would one have been found, in the opinion of both parties, sufficiently impartial? On which side would there have been the greatest danger of a successful employment of undue influence? Is it not evident that this expedient would have added to equal uncertainty, as to character and disposition, other casualities and more delay? Should it have been left to the two commissioners appointed by the parties to agree at all events? It might have been impossible for them to come to an agreement, and then the whole plan of settlement would have been frustrated. Would the sword have been a more certain arbiter? Of all uncertain things, the issues of war are the most uncertain. What do objections of this kind prove, but that there are persons resolved to object at all events?

The submission of this question to arbitration has been represented as an eventual dismemberment of

empire, which, it has been said, cannot rightly be agreed to, but in a case of extreme necessity. This rule of extreme necessity is manifestly only applicable to a cession or relinquishment of a part of a country, held by a clear and acknowledged title; not to a case of disputed boundary.

It would be a horrid and destructive principle that nations could not terminate a dispute about the title to a particular parcel of territory, by amicable agreement, or by submission to arbitration as its substitute; but would be under an indispensable obligation to prosecute the dispute by arms, till real danger to the existence of one of the parties should justify, by the plea of extreme necessity, a surrender of its pretensions.

Besides, the terms in which writers lay down the rule, and the reason of it, will instruct us that where it does apply, it relates not to territory as such, but to those who inhabit it, on the principle that the social compact entitles all the members of the society to be protected and maintained by the common strength in their rights and relations as members. It is understood that the territory between the two rivers in dispute is either uninhabited, or inhabited only by settlers under the British. If this be so, it obviates all shadow of difficulty on our side. But be it as it may, it would be an abuse of the rule, to oppose it to the amicable adjustment of an ancient controversy, about the title to a particular tract of country, depending on a question of fact, whether this or that river be the one truly intended by former treaties between the parties. The question is not,

in this case, Shall we cede a part of our country to another power? It is this—To whom does this tract of country truly belong? Should the weight of evidence be on the British side, our faith, pledged by the treaty, would demand from us an acquiescence in their claim. Not being able to agree in opinion on this point, it was most equitable and most agreeable to good faith to submit it to an impartial arbitration.

It has been asked, among other things, whether the United States were competent to the adjustment of the matter without the special consent of the State of Massachusetts. Reserving a more particular solution of this question to a separate discussion of the constitutionality of the treaty here, I shall content myself with remarking that our treaty of peace with Great Britain, by settling the boundaries of the United States without the specific consent or authority of any State, assumes the principle that the Government of the United States was of itself competent to the regulation of boundary with foreign powers—that the actual government of the Union has even more plenary authority with regard to treaties than was possessed under the confederation, and that acts, both of the former and of the present government, presuppose the competency of the national authority to decide the question in the very instance under consideration. I am informed, also, that the State of Massachusetts has, by repeated acts, manifested a corresponding sense on the subject.

A reflection not unimportant occurs here. It was, perhaps, in another sense than has been hitherto

noticed, a point of prudence in both governments to refer the matter in dispute to arbitration. If one had yielded to the pretensions of the other, it could hardly have failed to draw upon itself complaints, and censures, more or less extensive, from quarters immediately interested or affected.

CAMILLUS.

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(From the *Argus*.)

NO. XIV

1795.

The sixth article stipulates compensation to British creditors for losses and damages which may have been sustained by them, in consequence of certain legal impediments, which, since the treaty of peace with Great Britain, are alleged to have obstructed the recovery of debts bona fide contracted with them before the peace.

To a man who has a due sense of the sacred obligation of a just debt, a proper conception of the pernicious influence of laws which infringe the rights of creditors, upon morals, upon the general security of property, upon public as well as private credit, upon the spirit and principles of good government; who has an adequate idea of the sanctity of the national faith, explicitly pledged—of the ignominy attendant upon a violation of it in so delicate a particular as that of private pecuniary contracts—of the evil tendency of a precedent of this kind to the political and commercial interests of the nation generally—every law which has existed in this

country, interfering with the recovery of the debts in question, must have afforded matter of serious regret and real affliction. To such a man, it must be among the most welcome features of the present treaty, that it stipulates reparation for the injuries which laws of that description may have occasioned to individuals, and that, as far as is now practicable, it wipes away from the national reputation the stain which they have cast upon it. He will regard it as a precious tribute to justice, and as a valuable pledge for the more strict future observance of our public engagements; and he would deplore as an ill-omened symptom of the depravation of public opinion, the success of the attempts which are making to render the article unacceptable to the people of the United States. But of this there can be no danger. The spontaneous sentiments of equity, of a moral and intelligent people, will not fail to sanction, with their approbation, a measure which could not have been resisted without inflicting a new wound upon the honor and character of the country.

Let those men who have manifested by their actions, a willing disregard of their own obligations as debtors—those who secretly hoard, or openly or unblushingly riot on the spoils of plundered creditors, let such men enjoy the exclusive and undivided satisfaction of arraigning and condemning an act of national justice, in which they may read the severest reproach of their iniquitous principles and guilty acquisitions. But let not the people of America tarnish their honor by participating in that condemnation, or by shielding, with their favorable

opinion, the meretricious apologies which are offered for the measures that produce the necessity of reparation.

The recapitulation of some facts will contribute to a right judgment of this part of the treaty.

It is an established principle of the laws of nations, that, on the return of peace between nations which have been at war, a free and undisturbed course shall be given to the recovery of private debts on both sides.[1] In conformity to this principle, the 4th article of the treaty of peace between the United States and Great Britain expressly stipulates, "that creditors on either side shall meet with no lawful impediment to the recovery of the full value in sterling money of all bona-fide debts theretofore contracted."

Two instances of the violation of this article have been already noticed, with a view to another point; one relating to certain laws of the State of Virginia, passed prior to the peace, which, for several years after it, appears to have operated to prevent the legal pursuit of their claims by British creditors. Another, relating to a law of the State of South Carolina, which suspended the recovery of the debts for nine months, and after that period permitted the recovery only in four years' instalments.

But these were not all the instances; there were other laws of South Carolina prolonging the instalments, and obliging the creditors to receive in payment the property of debtors at appraised values; and there were laws of Rhode Island, New Jersey,

[1] Grotius, B. III., ch. xx., s. xvi.

North Carolina, and Georgia, making paper money a legal tender for the debts of those creditors; which, it is known, sustained a very great depreciation in every one of those States. These very serious and compulsory interferences with the rights of the creditors, have received from Decius, the soft appellation of a modification of the recovery of British debts. Does he expect to make us believe, by this smooth phrase, that the right to recover the full value of a debt in sterling money, is satisfied by the obligation to take as a substitute, one half, one third, or one fourth of the real value in paper?

It must necessarily have happened, that British creditors have sustained, from the operation of the different acts alluded to, losses more or less extensive, which the mere removal of the legal impediments which occasioned them could not repair. In many instances, the losses must have actually accrued and taken their full effect; in others, where no proceedings may have been had, the lapse of so many years must have created inabilities to pay, in debtors who were originally competent, who might have been made to pay, had there been a free course of justice.

The removal of the impediments, therefore, by opening of the courts of justice, was not an adequate satisfaction. It could not supersede the obligation of compensation for losses which had irretrievably accrued by the operation of the legal impediments, while they continued in force. The claim for this was still open on the part of Great Britain, and still to be adjusted between the two nations.

The excuse that these laws were retaliations for

prior infractions of treaty by Great Britain, was in no view an answer to the claim.[1]

In the first place, as has already been proved, the fact of such prior infractions was too doubtful to be finally insisted upon, and was, after a fruitless effort to obtain the acquiescence of the other party, properly and necessarily waived; so that it could not serve as a plea against reparation.

In the second place, if that fact had been indubitable, the species of retaliation was unwarrantable. It will be shown, when we come to discuss the 10th article, that the debts of private individuals are in no case proper objects of reprisals; that independent of the treaty, the meddling with them was a violation of the public faith and integrity; and that, consequently, it was due as much to our own public faith and integrity as to the individuals who had suffered, to make reparation. It was an act demanded by the justice, probity, and magnanimity of the nation.

In the third place, it was essential to reciprocity in the adjustment of the disputes which had existed concerning the treaty of peace. When we claimed the reinstatement and execution of the article with regard to the posts, it was just that we should

[1] It may not be improper to observe, that this excuse implies a palpable violation of the then Constitution of the United States. The confederation vested the powers of war and of the treaty in the Union. It therefore lay exclusively with Congress to pronounce whether the treaty was or was not violated by Great Britain, and what should be the satisfaction. No State, individually, had the least right to meddle with the question, and the having done it was an usurpation on the constitutional authority of the United States.

It might be shown, on a similar principle, that all confiscations or sequestrations of *British debts*, by particular States, during the war, were also unconstitutional.

consent to the reinstatement and execution of the article with regard to debts. If the obstruction of the recovery of debts was the equivalent by way of retaliation for the detention of the posts, we could not expect to have restitution of the thing withheld and to retain the equivalent for it likewise. The dilemma was to be content with the equivalent and abandon the thing, or to recover the thing and abandon the equivalent; to have both was more than we could rightly pretend. The reinstatement of the article, with regard to the debts, necessarily included two things: the removal of legal impediments as to the future recovery; compensation for past losses by reason of those impediments. The first had been effected by the new Constitution of the United States; the last is promised by the treaty.

Did our envoy reply that the reinstatement of the article with regard to the posts included likewise compensation for their detention? Was it an answer to this, destitute of reason, that our loss, by the detention of the posts, which resolved itself essentially into the uncertain profits of a trade that might have been carried on, admitted of no satisfactory rule of computation; while the principal and interest of private debts afforded a familiar standard for the computation of losses upon them; that, nevertheless, while this was the usual, and must be the admitted standard, it is an adequate one in cases where payment is protracted beyond the allowed term of credit—since the mere interest of money does not countervail among merchants, the profits of its employment in trade, and still less the derangements

of credit and fortune, which frequently result to creditors, from procrastinations of payment—and that the final damage to Great Britain, in these two particulars, for which no provision could be made, might well exceed any losses to us by the detention of the posts?

In the last place, the compensation stipulated was a *sine qua non* with Great Britain, of the surrender of the posts, and the adjustment of the controversy which had subsisted between the two countries. The making it such may be conceived to have been dictated more by the importance of the precedent, than by the quantum of the sum in question. We shall easily understand this, if we consider how much the commercial capital of Great Britain is spread over the world. The vast credits she is in the habit of extending to foreign countries, renders it to her an essential point to protect those credits by all the sanctions in her power. She cannot forbear to contend at every hazard against precedents of the invasion of the rights of her merchants, and for retribution where any happen. Hence, it is always to be expected, that she will be peculiarly inflexible on this point; and that nothing short of extreme necessity can bring her to relax in an article of policy, which, perhaps not less than any other, is a necessary prop of the whole system of her political economy.

It was, therefore, to have been foreseen that whenever our controversy with Great Britain was adjusted, compensation for obstructions to the recovery of debts would make a part of the adjustment.

The option lay between compensation, relinquishment of the posts, or war. Our envoy is entitled to the applause of all good men, for preferring the first. The extent of the compensation can, on no possible scale, compare with the immense permanent value of the posts, or with the expenses of war. The sphere of the interferences has been too partial to make the sum of the compensation, in any event, a very serious object; and as to a war, a conscientious or virtuous mind could never endure the thoughts of seeing the country involved in its calamities, to get rid of an act of justice to individuals, whose rights, in contempt of public faith, had been violated.

Having reviewed the general considerations which justify the stipulation of compensation, it will be proper to examine if the plan upon which it is to be made, is unexceptionable.

This plan contains the following features: 1. The cases provided for are those "where losses and damages occasioned by the operation of lawful impediments (which since the peace have delayed the full recovery of British debts, *bona fide contracted before the peace, and still owing to the creditors*, and have impaired and lessened the value and security thereof) *cannot now, for whatever reason, be actually obtained in the ordinary course of justice.*" 2. There is an express exception out of this provision, *of all the cases* in which losses and damages have been occasioned *by such insolvency of the debtors, or other causes, as would equally have operated to produce them, if no legal impediment had existed, or by the manifest delay,*

*or negligence, or wilful omission, of the claimants.* 3. The amount of the losses and damages, for which compensation is to be made, is to be ascertained by five commissioners to be appointed as follows: two by his Britannic Majesty, two by the President with the advice and consent of the Senate, the fifth by the unanimous voice of these four, if they can agree; if they cannot agree, then to be taken by lot out of two persons, one of whom to be named by the two British commissioners, the other by the two American commissioners. 4. These five commissioners, thus appointed, are, before they proceed to the execution of their trust, to take an oath for its faithful discharge. Three of them to constitute a board; but there must be present one of the two commissioners named on each side, and the fifth commissioner. Decisions to be made by majority of voices of those present. They are first to meet at Philadelphia, but may adjourn from place to place as they see cause. 5. Eighteen months after the commissioners make a board, are assigned for receiving applications; but the commissioners, in particular cases, may extend the term for any other term, not exceeding six months. 6. The commissioners are empowered to take into consideration all claims, whether of principal or interest, or balances of principal or interest, and to determine them according to the merits and circumstances thereof, and as justice and equity shall appear to them to require; to examine persons on oath or affirmation, and to receive in evidence, depositions, books, papers, or copies, or extracts thereof, either according to the

legal forms existing in the two countries, or according to a mode to be devised by them. 7. Their award is to be conclusive; and the United States are to cause the sum awarded in each case to be paid in specie to the creditor without deduction, and at such time and place as shall have been awarded; but no payment to be required sooner than twelve months from the day of the exchange of the ratifications of the treaty.

This provision for ascertaining the compensation to be made, while it is ample, is also well guarded.

It is confined to debts contracted before the peace, and still owing to the creditors. It embraces only the cases of loss or damage in consequence of legal impediments to the recovery of those debts which will exclude all cases of voluntary compromise, and can include none, where the laws have allotted a free course to justice. It can operate in no instance where, at present, *the ordinary course of justice* is competent to full relief, and the debtor is solvent; nor in any where insolvency or other cause would have operated to produce the loss or damage if no legal impediment had existed, or where it had been occasioned by the wilful delay, negligence, or omission of the creditor.

If it be said that the commissioners have nevertheless much latitude of discretion, and that in the exercise of it they may transgress the limits intended, the answer is that the United States, though bound to perform what they have stipulated with good faith, would not be bound to submit to a manifest abuse of authority by the commissioners. Should

they palpably exceed their commission, or abuse their trust, the United States may justifiably, though at their peril, refuse compliance. For example, if they should undertake to award upon a debt contracted since the peace, there could be no doubt that their award would be a nullity. So likewise there may be other plain cases of misconduct, which, in honor and conscience, would exonerate the United States from performance. It is only incumbent upon them to act, bona fide, and as they act at their peril, to examine well the soundness of the ground on which they proceed.

With regard to the reference to commissioners to settle the quantum of the compensation to be made, this course was dictated by the nature of the case. The tribunals of neither country were competent to retrospective adjustment of losses and damages, in many cases which might require it. It is for this very reason of the incompetency of the ordinary tribunals to do complete justice, that a special stipulation of compensation, and a special mode of obtaining it, became necessary. In constructing a tribunal to liquidate the quantum of reparation, in the case of a breach of treaty, it was natural and just to devise one likely to be more certainly impartial than the established courts of either party. Without impeaching the integrity of those courts, it was morally impossible that they should not feel a bias towards the nation to which they belonged, and for that very reason they were unfit arbitrators. In the case of the spoliations of our property, we should undoubtedly have been unwilling to leave the

adjustment in the last resort to the British courts; and by parity of reason, they could not be expected to refer the liquidation of compensation in the case of the debts to our courts. To have pressed this would have been to weaken our argument for a different course in regard to the spoliations. We should have been puzzled to find a substantial principle of discrimination.

If a special and extraordinary tribunal was to be constituted, it was impracticable to contrive a more fair and equitable plan for it than that which has been adopted. The remarks on the mode of determining the question respecting the river St. Croix, apply in full force here, and would render a particular comment superfluous.

To the objection of the Charleston committee, that the article erects a tribunal unknown to our Constitution, and transfers to commissioners the cognizance of matters appertaining to American courts and juries, the answer is simple and conclusive. The tribunals established by the Constitution do not contemplate a case between nation and nation arising upon a breach of treaty, and are inadequate to the cognizance of it. Could either of them hold plea of a suit of Great Britain, plaintiff, against the United States, defendant? The case, therefore, required the erection or constitution of a new tribunal; and it was most likely to promote equity to pass by the courts of both the parties.

The same principle contradicts the position that there has been any transfer of jurisdiction from American courts and juries to commissioners. It is

a question not between individual and individual, or between our Government and individuals, but between our Government and the British Government; of course, one in which our courts and juries have no jurisdiction. There was a necessity for an extraordinary tribunal to supply the defect of ordinary jurisdiction; and so far is the article from making the transfer imputed to it, that it expressly excepts the cases in which effectual relief can be obtained in the ordinary course of justice.

Nations acknowledging no common judge on earth, when they are willing to submit the question between them to a judicial decision, must of necessity constitute a special tribunal for the purpose. The mode by commissioners, as being the most unexceptionable, has been repeatedly adopted.

I proceed to reply to some other objections which have been made against the provision contained in this article.

It is charged with affixing a stigma on the national character, by providing reparation for an infraction, which, if it ever did exist, has been done away, there being now a free course to the recovery of British debts in the courts of the United States.

An answer to this objection has been anticipated by some observations heretofore made. The giving a free course to justice in favor of British creditors, which has been effected by the new Constitution of the United States, though it obviates the future operation of legal impediment, does not retrospectively repair the losses and damages which may have resulted from their past operation. In this respect,

the effects continued, and reparation was due. To promise it, could fix no stigma on our national character. That was done by the acts which created the cause for reparation. To make it, was as far as possible to remove the stigma.

It has been said that the promise of compensation produces injustice to those States which interposed no legal impediments to the recovery of debts, by saddling them with a part of the burden arising from the delinquencies of the transgressing States. But the burden was before assumed by the treaty of peace. The article of that treaty, which engaged that there should be no lawful impediments to the recovery of debts, was a guaranty by the United States of justice to the British creditors. It charged them with the duty of taking care that there was no legal obstacle to the recovery of the debts of those creditors, and consequently with a responsibility for any such obstacle which should happen, and with the obligation of making reparation for it. We must, therefore, refer to the treaty of peace, not to the last treaty, the common charge which has been incurred by interference in the recovery of British debts. The latter only carries into execution the promise made by the former. It may be added that it is a condition of the social compact that the nation at large shall make retribution to foreign nations for injuries done to them by its members.

It has been observed, that Mr. Jefferson has clearly shown, that interest in cases like that of British debts, is liable, during the period of the war, to equitable abatements and deductions; and that, therefore, the

discretion given to the commissioners on this head ought not to have been as large as it appears in the article.

Mr. Jefferson has no doubt offered arguments of real weight to establish the position that juries have, and exercise, a degree of discretion in any article of interest; and that the circumstances of our war with Great Britain afford strong reasons for abatements of interest. But it was foreign to his purpose, and accordingly he has not attempted to particularize the rules which ought to govern in the application of this principle to the variety of cases in which the question may arise; and he has himself noted that the practice in different States and in different courts, has been attended with great diversity. Indeed, admitting the right to abate interest under special circumstances, in cases in which it is the general rule to allow it, the circumstances of each case, are, perhaps, the only true criterion of the propriety of an exception. The particular nature of the contract, the circumstances under which it was entered into, the relative situation of parties, the possibility or not of mutual access,—these and other things would guide and vary the exercise of the discretion to abate. It was, therefore, right to leave the commissioners, as they are left, in the same situation with judges and juries:—to act according to the true equity of the several cases or of the several classes of cases.

Let it be remembered that the Government of Great Britain has to consult the interests and opinions of its citizens, as well as the Government of the United States those of their citizens. The only

satisfactory course which the former could pursue, in reference to its merchants, was to turn over the whole question of interest as well as principal to the commissioners. And as this was truly equitable, the Government of the United States could make no well-founded opposition to it.

CAMILLUS.

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## NO. XV

1795.

It is the business of the seventh article of the treaty, to provide for two objects: one, compensation to our citizens for injuries to their property, by irregular, or illegal captures, or condemnations; the other, compensation to British citizens for captures of their property within the limits and jurisdiction of the United States, or elsewhere, by vessels originally armed in our ports, *in the cases in which the captured property having come within our posts and power, there was a neglect to make restitution.*

The first object is thus provided for: 1. It is agreed, that in all cases of irregular or illegal captures or condemnations of the vessels and other property of citizens of the United States, under color of authority or commissions from his Britannic Majesty, in which adequate compensation for the losses and damages sustained, cannot, for whatever reason, be actually obtained in the ordinary course of justice, full and complete compensation for the same will be made by the British Government to the claimants—except where the loss or damage may have been occasioned by the manifest delay or negligence, or wilful

omission of those claimants. 2. The amount of the losses and damages to be compensated, is to be ascertained by five commissioners, who are to be appointed in exactly the same manner as those for liquidating the compensation to British creditors. 3. These commissioners are to take a similar oath, and to exercise similar powers for the investigation of claims with those other commissioners; and they are to decide according to the merits of the several cases, and to justice, equity, and the laws of nations. 4. The same term of eighteen months is allowed for the reception of claims, with a like discretion to extend the term, as in the case of British debts. 5. The award of these commissioners, or of three of them, under the like guards as in that case, is to be final and conclusive, both as to the justice of the claims and to the amount of the compensation. And, lastly, his Britannic Majesty is to cause the compensation awarded to be paid to the claimants in specie, without deduction, at such times and places, and upon the condition of such releases or assignments, as the commissioners shall prescribe.

Mutually and dispassionately examined, it is impossible not to be convinced, that this provision is ample, and ought to be satisfactory. The course of the discussion will exhibit various proofs of the disingenuousness of the clamors against it; but it will be pertinent to introduce here one or two samples of it.

It has been alleged, that while the article preceding, and this article, provide effectually for every demand of Great Britain against the United States, the provision for this important and urgent claim of ours

is neither explicit nor efficient, nor co-extensive with the object, nor bears any proportion to the *summary method* adopted for the satisfying of British claims.

This suggestion is every way unfortunate. The plan for satisfying our claim, except as to the description of the subject which varies with it, is an exact copy of that for making compensation to British creditors. Whoever will take the pains to compare, will find, that in the leading points, literal conformity is studied; and that in others, the provisions are assimilated by direct references; and will discover also this important distinction in favor of the efficiency and summariness of the provision for our claim —that while the commissioners are expressly restricted from awarding payment to British creditors, to be made sooner than one year after the exchange of ratifications of the treaty, they are free to award it to be made the very day of their decision, for the spoliations of our property. As to compensation for British property, captured within our limits, or by vessels originally armed within our ports and not restored, which is the only other British claim that has been provided for, it happens that this, forming a part of the very article we are considering, is submitted to the identical mode of relief which is instituted for making satisfaction to us.

So far, then, is it from being true, that a comparison of the modes of redress provided by the treaty, for the complaints of the respective parties, turns to our disadvantage, that the real state of the case exhibits a substantial similitude, with only one material difference, and that in our favor; and, that a strong

argument for the equity of the provisions on each side, is to be drawn from their close resemblance to each other.

The other objection alluded to, and which has been shamelessly reiterated, is that Denmark and Sweden, by pursuing a more spirited conduct, had obtained better terms than the United States. It is even pretended, that one or both of them had actually received from Great Britain a gross sum on account—in anticipation of an ultimate liquidation. In my second number, the erroneousness of the supposition that those Powers had obtained more than the United States, was intimated; but the subsequent repetition of the idea, more covertly in print, and very openly and confidently in conversation, renders expedient an explicit and peremptory denial of the fact. There never has appeared a particle of evidence to support it; and after challenging the assertors of it to produce their proof, I aver, that careful inquiry at sources of information at least as direct and authentic as theirs, has satisfied me that the suggestion is wholly unfounded, and that at the time of the conclusion of our treaty with Great Britain, both Denmark and Sweden were behind us in the effect of their measures for obtaining reparation.

What are we to think of attempts like these, to dupe and irritate the public mind? Will any prudent citizen still consent to follow such blind or such treacherous guides?

Let us now, under the influence of a calm and candid temper, without which truth eludes our researches, by a close scrutiny of the provision, satisfy

ourselves, whether it be not really a reasonable and proper one. But previous to this it is requisite to advert to a collateral measure, which was also a fruit of the mission to Great Britain, and which ought to be taken in conjunction with the stipulations of this article. I refer to the order of the British king in council, of the 6th of August, 1794, by which order the door, before shut by lapse of time, is opened to appeals from the British West India courts of admiralty, to be brought at any time which shall be judged reasonable by the lords commissioners of appeals in prize cases. This, of itself, was no inconsiderable step towards the redress of our grievances; and it may be hoped, that with the aid which the Government of the United States has given to facilitate appeals, much relief may ensue from this measure. It will not be wonderful, if it should comport with the pride and policy of the British Government, by promoting justice in their courts, to leave as little as possible to be done by the commissioners.

I proceed now to examine the characteristics of the supplementary provision made by the article, in connection with the objections to it.

1st. It admits fully and explicitly the principle, that compensation is to be made for the losses and damages sustained by our citizens, by irregular or illegal captures, or condemnations of their vessels and other property, under color of authority (which includes governmental orders and instructions) or of commissions of His Britannic Majesty. It is to be observed, that the causes of the losses and damages are mentioned in the disjunctive, "captures or con-

demnations"; so that damages by captures, which were not followed by condemnations, are provided for as well as those where condemnations did follow.

A cavil has been raised on the meaning of the word color, which, it is pretended, would not reach the cases designed to be embraced; because the spoliations complained of were made, not merely by *color*, but actually by *virtue* of instructions from the British Government.

For the very reason that this subtle and artificial meaning ascribed to the term, would tend to defeat the manifest general intent of the main provision of the article—which is plainly to give reparation for irregular or illegal captures or condemnations of American property, contrary to the laws of nations—that meaning must be deemed inadmissible.

But in fact, the expression is the most accurate that could have been used to signify the real intent of the article. When we say a thing was done by color of an authority or commission, we mean one of three things: that it was done on the pretence of a *sufficient* authority or commission *not validly* imparted, or on the pretence of *such* an authority or commission *validly* imparted but *abused* or *misapplied*, or on the pretence of an *insufficient* authority or commission, regularly, as to form, imparted and exercised. It denotes a defect of rightful and just authority, whether emanating from a wrong source, or improperly from a right source; whereas the phrase "by virtue of," is most properly applied to the valid exercise of a valid authority. But the two phrases are not unfrequently used as synonymous. Thus,

in a proclamation of a British king, of the 25th of May, 1792, he, among other things, forbids all his subjects, by *virtue* or under *color* of any foreign commission or letters of reprisals, to disturb, infest, or damage the subjects of France.

In whose mouths does the article put the expression? In those of citizens of the United States. What must they be presumed to have meant? Clearly this: that by color of instructions or commissions of his Britannic Majesty, either exercised erroneously, or issued erroneously, as being contrary to the laws of nations, the citizens of the United States had suffered loss and damage by irregular or illegal captures or condemnations of their property. What is the standard appealed to, to decide the irregularity or illegality to be redressed? Expressly the laws of nations. The commissioners are to decide "according to the merits of the several cases, to justice, equity, and the *laws of nations*." Wherever these laws, as received and practised among nations, pronounce a capture or condemnation of neutral property to have been irregular or illegal, though by color of an authority or commission of his Britannic Majesty, it would be the duty of the commissioners to award compensation.

The criticism, however, fails on its own principle, when tested by the fact. The great source of grievance, intended to be redressed by the article, proceeded from the instruction of the 6th of November, 1793. That instruction directs the commanders of ships of war and privateers to stop and detain all ships laden with goods, the produce of any colony be-

longing to France, or carrying provisions and other supplies for the use of such colony, and to bring the same, with their cargoes, to *legal adjudication* in the British courts of admiralty. These terms, "*legal adjudication*," were certainly not equivalent, upon any rational construction, to *condemnation*. Adjudication means simply, a judicial decision, which might be either to acquit or condemn. Yet the British West India courts of admiralty appear to have generally acted upon the term as synonymous with condemnation. In doing this, they may be truly said, even in the sense of the objection, to have acted by color, only, of the instruction.

The British Cabinet have disavowed this construction of the West Indian courts, and have, as we have seen, by a special act of interference, opened a door which was before shut to a reversal of their sentences, by appeal to the courts in England. We find, also, that the term adjudication is used in the seventeenth article of our late treaty as synonymous only with judicial decision, according to its true import. This, if any thing were wanting, would render it impossible for the commissioners to refuse redress on the ground of the condemnations, if otherwise illegal, being warranted by the pretended sense of the words legal adjudication. But in reality, as before observed, their commission will be to award compensation in all cases in which they are of opinion that, according to the established laws of nations, captures or condemnations were irregular or illegal, however otherwise authorized; and this in contempt of the quibbling criticism which has been so cunningly devised.

2d. The provision under consideration obliges the British Government, in all cases of illegal capture or condemnation in which adequate compensation cannot, for whatever reason, be actually had in the ordinary course of justice, to make full and complete compensation to the claimants, which is to be paid in specie to themselves, without deduction, at such times and places as shall be awarded.

They are not sent for redress to the captors, or obliged to take any circuitous course for their payment, but are to receive it immediately from the treasury of Great Britain.

3d. The amount of the compensation in each case is to be fixed by five commissioners,—two appointed by the United States, two by Great Britain; the fifth by these four, or in case of disagreement, by lot. These commissioners to meet and act in London.

It seems impossible, as has been observed and shown in the analogous cases, to imagine a plan for organizing a tribunal more completely equitable and impartial than this; while it is the exact counterpart of the one which is to decide on the claims of British creditors. Could it have been believed that so palpable an error could have been imposed on a town meeting, in the face of so plain a provision, as to induce it to charge against this article, that in a national concern of the United States, redress was left to British courts of admiralty? Yet, strange as it may appear, this did happen even in the truly enlightened town of Boston. The just pride of that town will not quickly forget that it has been so compromitted.

The truth is, that, according to the common usage

of nations, the courts of admiralty of the belligerent parties are the channels through which the redress of injuries to neutrals is sought. But Great Britain has been brought to agree to refer all the cases in which justice cannot be obtained through those channels to an extraordinary tribunal; in other words, to arbitrators mutually appointed.

It is here that we find the reparation of the national wrong which we had suffered. In admitting the principle of compensation by the government itself, in agreeing to an extraordinary tribunal, in the constitution of which the parties have an equal voice, to liquidate that compensation, Great Britain has virtually and effectually acknowledged the injury which has been done to our neutral rights, and has consented to make satisfaction for it. This was an apology in fact, whatever it may be in form.

As regards our honor, this is an adequate, and the only species usual in similar cases between nations; pecuniary compensation is the true reparation in such cases—governments are not apt to go upon their knees to ask pardon of other governments—Great Britain, in the recent instance of the dispute with Spain about Nootka Sound, was glad to accept of a like reparation. It merits remark, incidentally, that the instrument, which settles this dispute, expressly waives, like our treaty, reference to the merits of the complaints and pretensions of the respective parties. Is our situation such as to authorize us to pretend to impose humiliating conditions on other nations?

It is necessary to distinguish between injuries and insults, which we are too apt to confound. The

seizures and spoliations of our property fall most truly under the former head. The acts which produce them, embraced all the neutral Powers, were not particularly levelled at us, bore no mark of an intention to humble us by any peculiar indignity or outrage.

These acts were of June 8th, and of November 6th, 1793. The seizure of our vessels going with provisions to the dominions of France, under the first, was put on the double ground of a war extraordinary in its principle,[1] and of a construction of the laws of nations, which, it was said, permitted that seizure; a construction not destitute of color, and apparently supported by the authority of Vatel, though, in my opinion, ill founded. It was accomplished also by compensation for what was taken, and other circumstances, that evinced a desire to smooth the act. The indiscriminate confiscation of our property, upon the order of the 6th of November, which was the truly flagrant injury, was certainly unwarranted by that order (and no secret one has appeared), and the matter has been so explained by the British Government. It is clear that evils suffered under acts so circumstanced, are injuries rather than insults, and are so much the more manageable as to the species and measures of redress. It would be Quixotism to assert that we might not honorably accept in such a case, the pecuniary reparation which has been stipulated.

But it is alleged, in point of interest, it is unsatisfactory—tedious in the process, uncertain in the

[1] Though this country has viewed the principle of the war favorably, it is certain that Europe generally, the neutral Powers not wholly excepted, has viewed it in a different light, so that this was not a mere pretence.

event—that there ought to have been actual and immediate indemnifications, or at least, a payment upon account.

A little calm reflection will convince us that neither of the two last things was to be expected. There was absolutely no criterion, either for a full indemnification or for an advance upon account. The value of the property seized and condemned (lay out of the case damages upon captures where condemnation had not ensued) was not ascertained, even to our own government, with any tolerable accuracy. Every well-informed man will think it probable, that of this, a proportion was covered French property. There were, therefore, no adequate data, upon which our government could demand, or the British Government pay, a determined sum. Both governments must have acted essentially by guess. Ours could not in honor or conscience have made even an estimate but upon evidence. It might have happened, that a sum which appeared upon the evidence that had been collected, sufficient, might have proved on further evidence insufficient. Too little, as well as too much, might have been demanded and paid. But it will perhaps be said, that some gross estimate might have been formed; and that of this, such a part might have been advanced upon account, as was within the narrowest probable limit, liable to eventual adjustment. Let us for a moment suppose this done—what good end would it have answered? How could the United States have distributed this money among the sufferers, till it was ascertained which of them was truly entitled, and to how much?

Is it not evident, that if they had made any distribution, before the final and perfect investigation of the right of each claimant, it would be at the risk of making mispayments, and of being obliged to replace the sums mispaid, perhaps at a loss to the United States, for the benefit of those who should be found to be better entitled? Would it have been expedient for our government to have incurred this risk to its constituents? And if the money was to be held undistributed till an investigation of claims was completed, to what purpose the haste about an advance?

On the other hand, is it in this loose, gross way, that nations transact affairs with each other? Do even individuals make indemnifications to one another in so lumping a manner? Could it be expected of Great Britain, that she would pay, till it was fairly ascertained what was to be paid; especially when she had too much cause to suspect, that a material proportion of the property claimed, might turn out to be French? Would it have been justifiable on our part, to make her compliance with such a demand, the *sine qua non* of accommodation and peace? Whoever will believe that she would have complied with so humiliating a requisition, must be persuaded that we were in a condition to dictate, and she in a condition to be obliged to receive any terms that we might think fit to prescribe! The person who can believe this, must be, in my opinion, under the influence of a delirium, for which there is no cure in the resources of reason and argument.

It must be admitted, that it was a matter of necessity, that investigation should precede payment;

then I see not what more summary mode could have been devised. Who more capable of proceeding with dispatch, than arbitrators untrammelled with legal forms; vested with powers to examine parties and others, on oath, and to command and receive all evidence in their own way? Here are all the means of expedition divested of every clog.

Eighteen months are allowed for preferring claims, but the commissioners are at liberty to adjust them as fast as they are preferred. In every case in which it appears to them bona fide, that the ordinary course of justice is inadequate to relief, they may forthwith proceed to examine and decide. There is no impediment, no cause of delay whatever, more than the nature of a due investigation always requires.

The meeting of the commissioners at London, was recommended by the circumstance that the admiralty courts were likely to concentre there a considerable part of the evidence on which they were to proceed; which, upon the whole, might favor dispatch as well as more complete justice. In many cases the decisions of those courts may come under their review.

As to the uncertainty of the event, this, as far as it may be true, was inseparable from any plan, bottomed on the idea of a previous investigation of claims; and it has been shown that some such plan was reasonable and inevitable.

It may also be added, that the plan affords a moral certainty of substantial justice, which is all that can rationally be expected in similar affairs; compensation, where due, is explicitly stipulated. A fair and adequate mode of deciding and liquidating it has

been settled. All the arguments which were adduced to prove the probability of good faith, in regard to the posts, apply equally to this subject. The interest which every nation has in the preservation of character, and which the most profligate dare not entirely disregard; the consideration of defeating the fulfilment of the stipulations on our part; the size of the object, certainly not of great magnitude; the very discouraging situation for replunging suddenly into a new war, in which the present war will in every event leave Great Britain;—these are reasons which afford solid ground of assurances that there will be no evasion of performance.

As to the commissioners, two of the five will be of our choice, a third may be so likewise; but should it prove otherwise, it will be surprising if one of the other three, all acting under oath, and having character at stake, shall not be disposed to do us reasonable justice.

4th. While their power is coextensive with *all* losses and damages from irregular or legal captures or condemnations, their sentence in each case is to be conclusive, and the rules which are to govern it, as prescribed by the article, are the merits of each case, justice, equity, and the law of nations. What greater latitude could have been desired to be given? What greater latitude could have been given? What else in the case was there to have been provided for? What is meant by the assertion, that the provision is not commensurate with the object?

The general and unqualified reference to the laws of nations, dismisses all pretence to substitute the

arbitrary regulations of Great Britain as rules of decision. Her instructions or orders, if incompatible with those laws, are nullities.

Thus the treaty unfetters the question between us and her, from the commencement of the war, and with her own consent, commits them at large to a tribunal to be constituted by mutual choice.

Will any man of candor and equity say that a better provision ought to have been expected than has been accomplished?

The alternative was immediate indemnification, by actual payment in whole or in part, without examination of the extent or justice of claims; or future indemnification, after a due investigation of both in some equitable and effectual mode. The first was attended with difficulties on our side, and with solid objections on the other side. The last was therefore the truly reasonable course, and it has been pursued on a very proper plan. The causes of loss and damage are fully embraced. They are referred to the decision of an unexceptionable tribunal, to be guided by unexceptionable rules, and the indemnification which may be awarded, is to be paid fully, immediately, and without *detour* by the British Government itself. Say, ye impartial and enlightened, if all this be not as it ought to have been!

CAMILLUS.

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## NO. XVI

1795.

The second object of the seventh article, as stated in my last number, is "compensation to British

citizens, for captures of their property within the limits and jurisdiction of the United States, or elsewhere, by vessels originally armed in our ports, *in the cases in which the captured property having come within our power, there was a neglect to make restitution.*"

This precise view of the thing stipulated, is calculated to place the whole subject at once before the mind, in its true shape; to evince the reasonableness of it, and to dismiss the objections which have been made, as being foreign to the real state of the case. These objections are, in substance, that the compensation promised is of great extent and amount; that an enormous expense is likely to be incurred; and that it is difficult to prove that a neutral nation is under an obligation to go the lengths of the stipulation.

These remarks obviously turn upon the supposition, erroneously entertained or disingenuously affected, that compensation is to be made for *all captures* within our limits or jurisdiction, or elsewhere, by vessels originally armed in our ports, where restitution has not, in fact, been made. Did the stipulation stand on this broad basis, it would be justly liable to the criticism which has been applied to it. But the truth is, that its basis is far more narrow,—that instead of extending to all those captures, it is confined to the *particular cases* of them only, in which the captured property came, or was, after the capture, within our power, so as to have admitted of restitution by us but restitution was not made, through the *omission* or *neglect* of our Government. It does not extend to a single case, where the prop-

erty, if taken within our jurisdiction, was immediately carried out of our reach—or where, if taken within our jurisdiction, it was never brought within our reach, or where, if at any time within our reach, due means were employed without success to effect restitution.

It will follow from this, that the cases within the purview of the article, must be very few—for, except with regard to three prizes, made in the first instance, where special considerations restrained the Government from interposing, there has been a regular and constant effort of the executive, in which our courts have efficaciously coöperated, to restore prizes made within our jurisdiction, or by vessels armed in our ports. The extent or amount, therefore, of the compensation to be made, can by no possible means be considerable.

Let us, however, examine if the construction I give to the clause be the true one.

It is in these words: "It is agreed that in all such cases where *restitution* shall not have been made *agreeably* to the tenor of the letter from Mr. Jefferson to Mr. Hammond, dated September 5, 1793, a copy of which is annexed to this treaty, the complaints of the parties shall be and are hereby referred to the commissioners to be appointed by virtue of this article, who are hereby authorized and required to proceed in the like manner relative to these as to the other cases committed to them; and the United States undertake to pay to the complainants in specie, without deduction, the amount of such sums as shall be awarded to them respectively," etc.

The letter of Mr. Jefferson, by this reference to it, and its annexation to the treaty, is made virtually a part of the treaty. The cases in which compensation is promised, are expressly those in which *restitution* has not been made *agreeably to the tenor of that letter.*

An analysis of the letter will of course unfold the cases intended.

1. It recapitulates an assurance before given by a letter of the 7th August, to the British Minister, that measures were taken for excluding from further asylum in our ports, vessels armed in them to cruise on nations with which we were at peace, and for the restoration of the prizes the *Lovely Lass*, *Prince William Henry*, and the *Jane* of Dublin; *and that, should the measures of restitution fail in their effect, the President considered it as incumbent on the United States to make compensation for the vessels.* These vessels had been captured by French privateers, originally armed in our ports, and had been afterwards *brought within our ports.*

2. It states that we are bound by our treaties with three of the belligerent nations,[1] by all the means in our power, to protect and defend their vessels and effects in our ports or waters, or on the seas near our shore, and to recover and restore the same to the right owners, when taken from them; adding, that *if all the means in our power are used*, and fail in their effect, we are *not bound* by our treaties to make compensation. It further states, that though we have

[1] France, Holland, and Prussia, and our treaty with Sweden includes a like proviso.

no similar treaty with Great Britain, it was the opinion of the President, that we should use towards that nation the same rule which was to govern us with those other nations, and even to extend it to captures made on the high seas and *brought into our ports*, if done by vessels which had been armed within them.

3. It then draws this conclusion, that having, for particular reasons, *forborne to use all means in our power* for the restitution of the three vessels mentioned in the letter of the 7th of August, the President thought it incumbent upon the United States to make compensation for them; and though nothing was said in that letter, of other vessels, taken *under like circumstances* and *brought in* after the 5th of June, and before the date of that letter, yet when the *same forbearance* had taken place, it was his opinion that *compensation* would be *equally due*. The cases, then, here described, are those in which illegal prizes are made and *brought into our ports* prior to the 7th of August, 1793, and in which we had *forborne to use all the means in our power* for restitution. Two characters are made essential to the cases in which the compensation is to be made: one, that the prizes *were brought within our ports*—the other, that we *forbore to use all the means in our power* to restore them.

4. The letter proceeds to observe, that, as to prizes made under the *same circumstances, and brought in* after the date of that letter, the President had determined *that all means in our power should be used* for their restitution; that if *these failed*, as we should not be bound to make compensation to the other powers, in the analogous case, he did *not mean*

*to give an opinion that it ought to be done to Great Britain.* But still, if any case shall arise subsequent to that date, *circumstances of which shall place them on a similar ground with those before it*, the President would think compensation incumbent on the United States. The additional cases of which an expectation of compensation is given in this part of the letter, must stand on *similar ground with those before described*—that is, they must be characterized by the two circumstances of a *bringing within our ports*, and a *neglect to use all the means in our power* for their restitution. Everywhere the idea of compensation is negatived where the prizes have not come within our power, or where we have not forborne to use the proper means to restore them.

The residue of the letter merely contains suggestions for giving effect to the foregoing assurances.

This analysis leaves no doubt that the true construction is such as I have stated. Can there be any greater doubt that the expectations given by the President, in the first instance, and which have been only ratified by the treaty, were in themselves proper, and have been properly ratified?

The laws of nations, as dictated by reason, as received and practised upon among nations, as recognized by writers, establish these principles for regulating the conduct of neutral Powers.

A neutral nation (except as to points to which it is clearly obliged by antecedent treaties) whatever may be its opinion of the justice or injustice of the war on either side, cannot, without departing from its neutrality, *favor* one of two belligerent parties more

than the other—*benefit* one, to the *prejudice* of the other—furnish or permit the furnishing to either, the instruments of acts of hostility, or any warlike succor or aid whatever, especially without extending the same advantage to the other; cannot suffer any force to be exerted, or warlike enterprise to be carried on from its territory, by one party against the other, or the preparation or organization there of the means of annoyance; has a right and is bound to prevent acts of hostility within its jurisdiction; and, if they happen against its will, to restore any property which may have been taken in exercising them. These positions will all be found supported in the letter or spirit of the following authorities: Barbeyrac's note on Puffendorff, B. VIII., Ch. VI., f. 7. Grotius, B. III., Ch. XVII., f. 3. Bynkershoeck, B. I., Ch. VIII., p. 61–65. Chap. XI., p. 69, 70. Vatel, B. III., Ch. VII. Bynkershoeck cites examples of restitution in the case mentioned.

Every treaty we have made with foreign Powers promises protection within our jurisdiction, and the restoration of property taken there. A similar stipulation is, indeed, a general formula in treaties, giving an express sanction to the rule of the laws of nations in this particular.

An act of Congress of the 5th of June, 1794, which is expressly a declaratory act, recognizes at large the foregoing principles of the laws of nations, providing, among other things, for the punishment of any person who, within the United States, fits out and arms, or attempts to fit out and arm, or procures to be fitted out and armed, or is knowingly concerned in

furnishing, fitting out, or arming, any ship or vessel, with intent to be employed in the service of a foreign state, to cruise or commit hostilities upon the subjects or citizens of another foreign state, with which the United States are at peace; or issues or delivers a commission for any such ship or vessel, or increases or augments, or procures to be increased or augmented, or is knowingly concerned in increasing or augmenting the force of any ship of war, cruiser, or other armed vessel, in the service of a foreign state at war with another foreign state, with which the United States are at peace; or within the territory of the United States, begins or sets on foot, or provides or prepares the means of any military expedition or enterprise, to be carried on from thence against the dominions of any foreign state, with which the United States are at peace.

And our courts have adopted, in its fullest latitude, as conformable, in their opinion, with those laws, the principle of restitution of property, when either captured within our jurisdiction, or elsewhere, by vessels armed in our ports. The Supreme Court of the United States has given to this doctrine, by solemn decisions, the most complete and comprehensive sanction.

It is, therefore, undoubtedly the law of the land, determined by the proper constitutional tribunal, in the last resort, that *restitution is due* in the abovementioned cases.

And it is a direct and necessary consequence from this, that where it is not made by reason of the neglect of the government, to use the means in its

power for the purpose, there results an obligation to make reparation. For, between nations, as between individuals, wherever there exists a perfect obligation to do a thing, there is a concomitant obligation to make reparation for omissions and neglects.

The President was, therefore, most strictly justifiable, upon principle, in the opinion which he communicated, that, in the cases of such omissions or neglects, compensation ought to be made. And in point of policy, nothing could be wiser; for had he not done it, there is the highest probability that war would have ensued.

Our treaty with France forbids us expressly to permit the privateers of the enemy to arm in our ports, or to bring or sell there the prizes which they have made upon her. We could not, for that reason, have made the privilege of arming in our ports, if it had been allowed to France, reciprocal. The allowance of it to her would, consequently, have been a clear violation of neutrality, in the double sense of permitting a military aid, and of permitting it to the one and refusing it to the other. Had we suffered France to equip privateers in our ports, to cruise thence upon her enemies, and to bring back and vend there the spoils or prizes taken, we should have become by this the most mischievous foe they could have. For, while all our naval resources might have augmented the force of France, our neutrality, if tolerated, would, in a great degree, have sheltered and protected her cruisers. Such a state of things no nation at war could have acquiesced in. And, as well to the efficacy of our endeavors to prevent

equipments in our ports as to the proof of the sincerity of those endeavors, it was essential that we should restore the prizes which came within our reach, made by vessels armed in our ports. It is known that, notwithstanding the utmost efforts of the Government to prevent it, French privateers have been clandestinely equipped in some of our ports, subsequent to the assurances which were given that the practice would be discountenanced. If prizes made by such vessels were suffered to be brought into our ports, and sold there, this would be not only a very great encouragement to the practice, but it would be impossible that it should be regarded in any other light than as a connivance.

In such circumstances, can we blame our Chief Magistrate? Can we even deny him praise, for having diverted an imminent danger to our peace, by incurring the responsibility of giving an expectation of compensation? The conjuncture we may remember was critical and urgent. Congress were at the time in recess. A due notice to convene them in so extensive a country, can hardly be rated at less than three months.

In this situation our envoy found the business. It is not true, in the sense in which it has been advanced, that he was to be governed by the fitness of the thing, unmindful of the opinion of the President. An opinion of the chief magistrate of the Union, was to a diplomatic agent an authority and a guide, which he could not justifiably have disregarded. The claim of compensation, on the other side, was greatly *fortified* by this opinion. Nor was it a mat-

ter of indifference to our national delicacy and dignity, that the expectation given by it should be fulfilled. It would have been indecent in our envoy to have resisted it. It was proper in him, by acceding to it, to refer the matter to the ultimate decision of that authority, which, by our Constitution, is charged with the power of making treaties. It was the more proper, because the thing was intrinsically right. Every candid man, every good citizen, will rejoice that the President acted as he did in the first instance—that our envoy acted as he did in the second, and that the conduct of both has received the final constitutional sanction.

The opinions of Mr. Jefferson, when they can be turned to the discredit of the treaty, are with its adversaries oracular truths. When they are to support it; they lose all their weight. The presumption, that the letter referred to had the concurrence of the judgment of that officer, results from a fact, generally understood and believed—namely: that the proceedings of the President, at the period when it was written, in relation to the war, were conformable with the unanimous advice of the heads of the executive departments.

This case of British property captured by privateers originally armed in our ports, falsifies the assertion of the adversaries of the treaty, that the pretensions of Great Britain have been fully provided for. She had a colorable ground to claim compensation for *all captures* made by vessels armed in our ports, whithersoever carried in, or howsoever disposed of, especially where their equipment had been

tolerated by our Government. This toleration was to be inferred, as well from a forbearance to suppress those vessels when they came within our power, as from an original permission. Had compensation been stipulated on this scale, it is not certain that it would not have amounted to as much more than that which has been promised, as would counterbalance our claims for negroes carried away, and for the detention of the posts. But instead of this, it is narrowed down by the treaty to such prizes of those vessels as were brought within our ports, and in respect to which we forbore to use all the means in our power for restitution. Here, then, is a set-off against doubtful and questionable claims relinquished on our side. Here, also, is another proof how much the antagonists of the treaty are in the habit of making random assertions. But can we wonder at it, when we reflect that they have undertaken to become the instructors of their fellow-citizens on a subject, in the examination of which they unite a very superficial knowledge with the most perverse dispositions?

CAMILLUS.

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## NO. XVII

1795.

The eighth article provides merely, that the commissioners to be appointed in the three preceding articles, shall be paid in such manner as shall be agreed between the parties, at the time of the ex-

change of the ratification of the treaty; and that all other expenses attending the commissions, shall be defrayed jointly by the two parties, the same being previously ascertained and allowed by a majority of the commissioners; and that in case of death, sickness, or necessary absence of a commissioner, his place shall be supplied in the same manner as he was first appointed—the new commissioner to take the same oath or affirmation, and to perform the same duties as his predecessor.

Could it have been imagined, that even this simple and equitable provision was destined not to escape uncensured? As if it was predetermined that not a single line of the treaty should pass without the imputation of guilt; nothing less than an infraction of the Constitution of the United States has been charged upon this article. It attempts, we are told, a disposition of the public money, unwarranted by and contrary to the Constitution. The examination of this wonderful, sagacious objection, with others of a similar complexion, must be reserved for the separate discussion which has been promised of the constitutionality of the treaty.

Let us proceed, for the present, to the 9th article.

This article agrees that British subjects who *now hold* lands in the territories of the United States, and American citizens who *now hold* lands in the dominions of his Britannic Majesty, shall continue to hold them, *according to the nature and tenure of their respective estates and titles therein;* and may grant, sell, or devise the same to whom they please, in like manner as if they were natives; and that neither they,

nor their heirs or assigns, *so far as may respect the said lands*, and the legal remedies incidental thereto, shall be *regarded as aliens*.

The misapprehension of this article, which was first ushered into public view in a very incorrect and insidious shape, and was conceived to amount in the grant of an indefinite and permanent right to British subjects to hold lands in the United States, did more, it is believed, to excite prejudices against the treaty than any thing that is really contained in it. And yet when truly understood, it is found to be nothing more than a confirmation of those rights to lands, which, prior to the treaty, the laws of the several States allowed British subjects to hold; with this inconsiderable addition, perhaps, that the heirs and assigns of those persons, *though aliens*, may hold the same lands: but no right whatever is given to lands of which our laws did not permit and legalize the acquisition.

These propositions will now be elucidated.

The term "hold" in the legal code of Great Britain and of these States has the same and that a precise technical sense. It imports a *capacity legally* and *rightfully* to *have* and *enjoy* real estate, and is contra-distinguished from the mere capacity of *taking* or *purchasing*, which is sometimes applicable to the acquisition of a thing, that is forfeited by the very act of acquisition. Thus an alien may *take* real estate by *purchase*, but he cannot hold it. Holding is synonymous with tenure, which, in the feudal system, implies *fealty*, of which an alien is incapable. Land, therefore, is forfeited to the Government the

instant it passes to an alien. The Roman law nullifies the contract entirely, so that nothing passes by the grant of land to an alien; but our law, derived from that of England, permits the land to pass for the purpose of forfeiture to the State. This is not the case with regard to *descent*, because the succession or transmission there, being an act of law, and the alien being disqualified to hold, the law, consistent with itself, casts no estate upon him.

The following legal authorities, selected from an infinite number of similar ones, establish the above positions, viz.: *Coke on Littleton*, pages 2, 3: "Some men have *capacity* to *purchase*, but not *ability* to *hold*. Some *capacity* to *purchase* and *ability* to *hold* or *not to hold*, at the election of themselves and others. Some, capacity to *take* and to *hold*. Some, neither capacity to *take* nor to *hold*. And some are specially disabled to *take* some *particular thing*. If an alien, Christian or infidel, *purchase* houses, lands, tenements, or hereditaments to him or his aliens, albeit he can have no heirs, yet he is of capacity to *take* a fee simple, but *not to hold*." The same, page 8: "If a man seized of land in fee, hath issue an alien, he cannot be heir, *propter defectum subjectionis*." Blackstone's *Commentaries*, Book II., Chap. XVIII., § 2: "Alienation to an alien is a cause of forfeiture to the crown of the lands so alienated, not only on account of his *incapacity to hold* them, but likewise on account of his presumption in attempting, by an act of his own, to acquire real property." *Idem.*, Chap. XIX., § 1.: "The case of an alien born, is also peculiar; for he may *purchase*

a thing; but, after purchase, he can hold nothing, except a lease for years of a house, for the convenience of merchandise."

Thus it is evident, that by the laws of England, which it will not be denied, agree in principle with ours, an ALIEN may *take* but cannot *hold* lands.

It is equally clear, the laws of both countries agreeing in this particular, that the word *hold*, used in the article under consideration, must be understood according to those laws, and therefore can only apply to those cases in which there was a *legal capacity to hold*—in other words, those in which our laws permitted the subjects and citizens of the two parties to *hold* lands in the territories of each other. Some of these cases existed prior to the treaty of peace; and where confiscations had not taken place, there has never been a doubt, that the property was effectually protected by that treaty. Others have arisen since that treaty, under special statutes of particular States. Whether there are any others depending on the principles of the common law, need not be inquired into here, since the late treaty will neither strengthen nor impair the operation of those principles.

Whatever lands, therefore, may have been purchased by any British subject, since the treaty of peace, which the laws of the State wherein they were purchased did not permit him to acquire and hold, are entirely out of the protection of the article under consideration; the purchase will not avail him; the forfeiture, which was incurred by it, is still in full force. As to those lands which the laws of

a State allowed him to purchase and hold, he owes his title to them, not to the treaty.

Let us recur to the words of the article: "British subjects, who *now hold* lands, shall *continue* to *hold* them *according to the nature and tenure of their respective estates and titles therein.*" But it has been seen, that to *hold* lands is to own them in a legal and competent capacity, and that an alien has no such capacity. The lands, therefore, which, by reason of the alienage of a British subject, he could not, prior to the treaty, legally purchase and hold—he cannot, under the treaty, continue to hold. As if it was designed to render this conclusion palpable, the provision goes on to say, "According to the nature and tenure of their respective estates and titles therein." This is equivalent to saying, they shall continue to hold as they before held. If they had no valid estate or title before, they will of course continue to have none—the expressions neither give any new, nor enlarge any old estate.

The succeeding clauses relate only to descents or alienations of the land originally legally holden. Here the disability of alienage is taken away from the heirs and assigns of the primitive proprietors. While this will conduce to private justice, by enabling the families and friends of individuals to enjoy their property by descent or devise, which, it is presumable was the main object of the provision, there is no consideration of national policy that weighs against it. If we admit the whole force of the argument, which opposes the expediency of permitting aliens to hold lands (and concerning which I shall

barely remark here, that it is contrary to the practice of several of the States, and to a practice from which some of them have hitherto derived material advantages) the extent to which the principle is affected by the present treaty is too limited to be felt, and in the rapid mutations of property, it will every day diminish. Every alienation of a parcel of the privileged land to a citizen of the United States, will, as to that land, by interrupting the chain, put an end to the future operations of the privilege; and the lapse of no great number of years may be expected to make an entire revolution in the property, so as to divest the whole of the privilege.

To manifest the unreasonableness of the loud and virulent clamor, which was incited against this article, it has been observed by the friends of the instrument, that our treaty with France not only grants a much larger privilege to the citizens of France, but goes the full length of removing universally and perpetually from them the disability of alienism, as to the ownership of lands. This position has been flatly denied by some of the writers on the other side. Decius in particular, after taking pains to show that it is erroneous—that the terms "goods movable and immovable," in the article of our treaty with France, mean only *chattels* real and personal in the sense of our law, and exclude a right to the freehold and inheritance of lands, triumphantly plumes himself on the detection of a fallacy of the writer of certain "candid remarks on the treaty," who gives the interpretation above stated to that article.

The error of Decius's interpretation, proceeds

from a misunderstanding of the term goods, in the English translation of the article, to which he annexes the meaning assigned to that term in our law, instead of resorting, as he ought to have done, to the French laws for the true meaning of the correspondent term *biens*, which is that used in the French original. Goods, in our law, no doubt, mean chattel interests; but goods or "*biens*" in the French law, mean all kinds of property, *real* as well as personal. It is equivalent to, and derived from, the term *bona*, in the Roman law, answering most nearly to "*estates*" in our law, and embracing inheritances in land, corporeal and incorporeal hereditaments, as well as property in movable things.

When it is necessary to distinguish one species from another, it is done by an adjective—"*biens meubles et immeubles*," answering to *bona* or *res mobilia*, or *immobilia*, things movable and immovable, *estates* real and personal. The authorities at foot [1] will show the analogy of these different terms in the three different languages; but for fixing the precise sense of those used in the treaty, I have selected and shall quote two authorities from French books, which are clear and conclusive on the point. One will be found in the work of a French lawyer, entitled, *Collection de Decisions Nouvelles, et de Notions Relatives à la Jurisprudence Actuelle*, under the article BIENS,[2] and is in these words, viz.: "The word *bien* has a general signification, and comprehends *all*

[1] Justinian's *Institutes*, lib. iii., tit. 10, 11, 12, 13; lib. iv., tit. 2. Domat's *Civil and Public Law*. Prel. Book, tit. 3, secs. 1, 2; book iv., sec. 1.

[2] Biens. Le mot, bien, a une signification generale, & comprend

*sorts of possessions* as *movables*, *immovables*, *purchases*, *acquisitions* by marriage, *inheritance*, etc. It is distinguished into these particulars: movables, immovables, purchases, and inheritances; subdividing inheritances into *paternal and maternal*, *old and new*. Movable *biens* are those which may be moved and transported from one place to another, as wares, merchandises, and current money, plate, beasts, household utensils, etc. Immovable *biens* are those which cannot be moved from one place to another, as inheritances, houses, etc. *Biens* are distinguished again into corporeal and incorporeal." Another [1] is drawn from the celebrated institutes of the French law, by Mr. Argou, and is in these words: "Biens—This is in general whatever composes our riches. There are two sorts of *biens*, movable and

toutes sortes de possessions, comme meubles, immeubles, acquêts, conquêts, propres, etc.

On distingue dans les biens des particuliers, les meubles & les immeubles, les acquêts & les propres; & entre les propres, les paternels & les maternels, les anciens & les naissans. Les biens meubles sont ceux qui peuvent se mouvoir & se transporter d'un lieu en un autre, comme des denrees, des marchandises, de deniers comptans, de la vaisselle d'argent, des bestiaux, des utensiles d'hotel. Les biens immeubles sont ceux qui ne peuvent se mouvoir ou se transporter d'un lieu dans un autre, comme des heritages, des maisons, etc.

[1] Biens.—C'est en generale tout ce qui compose nos richesses; il y a deux sortes de biens, les meubles & les immeubles; meubles, tout ce qui peut etre transporté d'un lieu à un autre: immeubles—biens en fonds, ou qui sont presumé avoir la nature de fonds—On distingue deux sortes d'immeubles, les réels, & les fictifs; les immeubles réels sont non seulement la substance meme de la terre qui est ce qu'on appelle le fond, mais tout ce qui est adherent à sa surface, soit par la nature, comme les arbres, soit par la main des hommes, comme les maisons & autres batiments—On a appellé l'autre espece d'immeubles, immeubles fictifs; parce qu'ils ne sont telles que par fiction; de ce nombre sont les offices venaux, casuels, & les rentes constituées.

immovable. Movable, all that may be transported from one place to another. Immovable, lands or what is presumed to have the nature of land. They are distinguished into two kinds, real and fictitious. Real are not only the *substance of the earth*, which is called *fond;* but all that adheres to its surface, whether from nature, as trees, or from the hand of man, as houses and other buildings. The others are called fictitious, because they are only real by fiction, as offices which are vendible, and subject to fiscal reversion, rent-charges, etc." The signification of *bona* in the Roman law, corresponds, as was observed above, with that of *biens* in the French. "*Bonorum appellatio universitatem quandem, et non singulas res demonstrat*";* which may be rendered, "The appellation of BONA designates the totality of property or estate, and not particular things"—and hence it is, that the *cessio bonorum* of a debtor is the surrender of his whole fortune.

Both these terms, "*bona*" and "*biens*" are indiscriminately translated *goods, estates, effects, property.*[1] In our treaty with France they are translated "goods"; but it is evidently a great mistake to understand the expression in the limited sense of our law. Being a mere word of translation, it must be understood according to the meaning of the French text; for it is declared in the conclusion of the treaty that it was originally composed and concluded in the French tongue. Moreover, the term

[1] See authorities before cited. See also Puffendorff, Book VIII., ch. v., sec. 8; Grotius, Book III., ch. v., sec. 11, 12; Vatel, Book I., ch. xx., sec. 245, 246, 247.

*goods*, when used in our language as the equivalent of the term *bona*, or *biens*, is always understood in the large sense of the original term; in other words, as comprehending real and personal estate, inheritances as well as chattel interests.

Having now established the true meaning of the terms "goods movable and immovable," let us proceed with this guide to a review of the article.

Its first and principal feature is: "that the subjects and inhabitants of the United States, or any of them, shall not be reputed AUBAINS in France." This is the same as if it had been said: "they shall not be reputed ALIENS." For the definition of AUBAINS, as given in the work before first cited, is this: "AUBAINS are persons not born under the dominion of the king," the exact equivalent of the definition of ALIEN in the English law. If our citizens are not to be reputed aliens in France, it follows that they must be exempted from alien disabilities, and must have the same rights with natives, as to acquiring, conveying, and succeeding to real and other estate. Accordingly the article, having pronounced that our citizens shall not be reputed aliens in France, proceeds to draw certain consequences. The first is, that they shall not be subject to the *droit d' aubaine*. The *droit d' aubaine* was, under the monarchy, one of the regalia; it was the right of the prince to succeed to all estates or property situate in the kingdom belonging to foreigners who died without legitimate children, born in the kingdom.

It is to be observed that the laws of France permitted foreigners to acquire and hold even real es-

tates, subject to the right of the sovereign, in case of demise without issue born under his allegiance. But this right of the sovereign, as to American citizens, is abrogated by the treaty; so that their legal representatives, wherever born, may succeed to all the property, real or personal, which they may have acquired in France.

And, in conformity to this, it is further declared that they may, by testament, donation, or otherwise, dispose of their goods, movable and immovable (that is, as we have seen, their estates, real and personal) in favor of such persons as to them shall appear good; so that their heirs, subjects of the United States, whether residing in France or elsewhere, may succeed to them, *ab intestato*, without being obliged to obtain letters of naturalization.

These are the stipulations on the part of France; and they amount to a removal from the citizens of the United States of alien disabilities in that country as to property. I say as to property, because, as to civil and ecclesiastical employments, it seems to have been a principle of the French law that the incapacity of foreigners could only be removed by special dispensations, directed to the particular object.

What are the correlative stipulations on the part of the United States? They are in these terms: "The subjects of the most Christian king shall enjoy, on their part, in all the dominions of the said States, an *entire* and *perfect reciprocity*, relative to the stipulations contained in this article. But it is at the same time agreed that its contents shall not affect the laws made, or that may be made hereafter in France

against emigrations, which shall remain in all their force and vigor; and the United States, on their part, or any of them, shall be at liberty to enact such laws relative to that matter as to them shall appear proper."

Since, then, the article removes from our citizens the disabilities of aliens as to property in France, and stipulates for her citizens an entire and perfect reciprocity in the United States, it follows that Frenchmen are equally exempt in the United States from the like disabilities. They may, therefore, hold, succeed to, and dispose of real estates.

It appears that the sense both of the French and of the American Government has corresponded with this construction.

In the year 1786, the Marquis Bellegarde and the Chevalier Meziere, sons of the two sisters of General Oglethorpe, represented to the Count de Vergennes, the French minister for foreign affairs, that they met with impediments to their claims from the laws of Georgia, prohibiting aliens to hold lands. M. de Vergennes communicated their complaint to Mr. Jefferson, our then minister in France, observing, that the alien disabilities of the complainants having, in common with those of all Frenchmen, been removed by the treaty between the two countries, they ought to experience no impediments on that account, in the succession to the estate of their uncle, and that the interfering laws of Georgia ought to be repealed so as to agree with the treaty.

Mr. Jefferson, in reply, states the case of the complainants, proving that they were precluded from the

succession for other reasons than that of alienism; and then adds, that as the treaty with France having placed the subjects of France in the United States on a footing with natives, as to conveyances and *descents* of property, there is no necessity for the assemblies to pass laws on the subject, the treaty being a law, as he conceives, superior to those of particular assemblies, and repealing them when they stand in the way of its operation.

Where now, DECIUS, is thy mighty triumph? Where the trophies of thy fancied victory? Learn that in political, as well as other science,

> "Shallow draughts intoxicate the brain,
> And drinking largely, sobers us again."

The fixing the true sense of the article in the treaty with Great Britain, is alone a refutation of most of the objections which have been made to it, by showing, that they apply not to what really exists, but to a quite different thing. It may be useful, however, to pass them briefly in review with some cursory remarks.

The article, it is said, infringes the rights of the States, and impairs the obligation of private contracts, permits aliens to hold real estates against the fundamental policy of our laws, and at the hazard of introducing a dangerous foreign influence; is unequal, because no American has been hardy enough, since the peace, to purchase lands in England, while millions of acres have been purchased by British subjects in our country, with knowledge of the risk—is not warranted by the example of any other treaty

we have made; for if even that of France should contain a similar provision (which is denied) still the difference of circumstances would make it an inapposite precedent; since this was a treaty made, *flagrante bello*, in a situation which justified *sacrifices*.

These objections have been formally and explicitly urged. One writer, afraid of risking a direct assertion, but insidiously endeavoring to insinuate misconception, contents himself with putting a question. What (says he) will be the effect of this article as to the revival of the claims of British subjects, traitors, or exiles?

As to the infraction of the rights of the States, this, it is presumed, must relate to the depriving them of forfeitures of alien property. But as the article gives no right to a British subject to hold any lands which the laws of the State did not previously authorize him to hold, it prevents no forfeiture to which he was subject by them, and, consequently, deprives no State of the benefit of any such forfeiture. With regard to escheats for want of qualified heirs, it depended on every proprietor to avoid them by alienations to citizens.

As to impairing the obligation of private contracts, it is difficult to understand what is meant. Since land, purchased by an alien, passes from the former proprietor, and becomes forfeited to the State, can it be afterwards the subject of a valid private contract? If the effect of the article was to confirm a defective title derived from the alien, how could this impair the obligation of any other private contract concerning it? But whatever may be intended, it is enough to

say, that the article does not confirm the title to any land which was not before good. So that the ground of the objection fails.

As to permitting aliens to hold land, contrary to the policy of our laws, it has been shown, that on a true construction, it only applies to the very limited case of the alien heirs and assigns of persons who before rightfully held lands, and is confined to the identical lands so previously holden; that its greatest effect must be insignificant; and that this effect will continually decrease.

As to the millions of acres, said to have been purchased by British subjects since the peace, it has been shown, that if by the laws of the States in which the purchases were made, they were illegally acquired, they still remain in the situation in which they were before the treaty.

As to there being no precedent of a similar stipulation with any other country, it has been proved that, with *France*, we have one much broader. The idea that this was a sacrifice to the necessity of our situation, *flagrante bello*, is new. Are we then to understand that we in this instance gave to France, as the *price* of her assistance, a privilege in our country, which leads to the introduction of a foreign influence, dangerous to our independence and prosperity? For to this result tends the argument concerning the policy of the exclusion of aliens. Or is it that no privilege granted to France can be dangerous?

Those who are not orthodox enough to adopt this last position may, nevertheless, tranquillize themselves about the consequences. This is not the

channel through which a dangerous foreign influence can assail us. Notwithstanding all that has been said, it may, perhaps, bear a serious argument, whether the permission to foreigners to hold lands in our country might not, by the operation of private interest, give us more influence upon foreign countries than they will ever acquire upon us from the holding of those lands. Be this as it may, could we not appeal to some *good patriots*, as they style themselves, by way of eminence, for the truth of the observation that foreign governments have more direct and powerful means of influence than can ever result from the right in question?

Moreover, there was a peculiar reason for the provision which has been made in our last treaty, not applicable to any treaty with another country. The former relative situation of the United States and Great Britain led to the possession of lands by the citizens of each in the respective territories. It was natural and just to secure by treaty their free transmission to the heirs and assigns of the parties.

As to the revival of the claims of traitors or exiles, if property, *confiscated* and *taken away*, is property *holden* by those who have been deprived of it, then there may be ground for alarm on this score. How painful is it to behold such gross attempts to deceive a whole people on so momentous a question! How afflicting, that imposture and fraud should be so often able to assume with success the garb of patriotism? And that this sublime virtue should be so frequently discredited by the usurpation and abuse of its name! CAMILLUS.

NO. XVIII

1795.

It is provided by the tenth article of the treaty that "neither debts due from individuals of one nation to individuals of the other, nor shares, nor moneys, which they may have in the public funds, or in the public or private banks, shall ever in any event of war, or national difference, be sequestered or confiscated; it being unjust and impolitic, that debts and engagements contracted and made by individuals, having confidence in each other, and in their respective governments, should ever be destroyed or impaired by national authority on account of national differences and discontents."

The virulence with which this article has been attacked cannot fail to excite very painful sensations in every mind duly impressed with the sanctity of public faith, and with the importance of national credit and character; at the same time that it furnishes the most cogent reasons to desire that the preservation of peace may obviate the pretext and the temptation to sully the honor and wound the interests of the country by a measure which the truly enlightened of every nation would condemn.

I acknowledge, without reserve, that in proportion to the vehemence of the opposition against this part of the treaty, is the satisfaction I derive from its existence, as an obstacle the more to the perpetration of a thing, which, in my opinion, besides deeply injuring our real and permanent interest, would cover us with ignominy. No powers of language at my command can express the abhorrence I feel at the idea of

violating the property of individuals, which, in an authorized intercourse, in time of peace, has been confided to the faith of our Government and laws, on account of controversies between nation and nation. In my view, every moral and every political sentiment unite to consign it to execration.

Neither will I dissemble, that the dread of the effects of the spirit which patronizes that idea, has ever been with me one of the most persuasive arguments for a pacific policy on the part of the United States. Serious as the evil of war has appeared, at the present stage of our affairs, the manner in which it was to be apprehended it might be carried on, was still more formidable, in my eyes, than the thing itself. It was to be feared, that in the fermentation of certain wild opinions, those wise, just, and temperate maxims, which will for ever constitute the true security and felicity of a state, would be overruled; and that a war upon credit, eventually upon property, and upon the general principles of public order, might aggravate and embitter the ordinary calamities of foreign war. The confiscation of debts due to the enemy, might have been the first step of this destructive process. From one violation of justice to another, the passage is easy. Invasions of right, still more fatal to credit, might have followed; and this, by extinguishing the resources which that could have afforded, might have paved the way to more comprehensive and more enormous depredations for a substitute. Terrible examples were before us; and there were too many not sufficiently remote from a disposition to admire and imitate them.

The earnest and extensive clamors against the part of the treaty under consideration, confirm that anticipation; and while they enhance the merit of the provision, they also inspire a wish, that some more effectual barrier had been erected against the possibility of a contrary practice being ever, at any ill-fated moment, obtruded upon our public councils. It would have been an inestimable gem in our national Constitution, had it contained a positive prohibition against such a practice, except, perhaps, by way of reprisal for the identical injury on the part of another nation.

Analogous to this is that liberal and excellent provision, in the British Magna Charta, which declares, that "if the merchants of a country at war with England, are found there in the beginning of the war, they shall be attached without harm of body or *effects*, until it is known in what manner English merchants are treated in the enemy's country; and if they are safe, that the foreign merchants shall also be safe." [1] The learned Lord Coke pronounces this to be *jus belli* or law of war. And the elegant and the enlightened Montesquieu, speaking of the same provision, breaks out into this exclamation: "It is noble that the English nation have made this one of the articles of its liberty." [2] How much it is to be regretted, that our magna charta is not unequivocally decorated with a

[1] Si Mercatores sint de terra contra nos guerrira, et tales inveniantur in terra nostra in principio guerræ, attachientur sine damno corporum suorum vel *rerum*, donec sciatur a nobis vel a capitali justiciario nostro quo modo mercatores terræ nostræ tractantur qui tunc inveniantur in terra illa contra nos guerrira; et si nostri salvi sint ibi, alii salvi sint in terra nostra. Magna Charta, cap. xxx.

[2] *Spirit of Laws*, Book XX., chap. xiii.

like feature; and that, in this instance, we, who have given so many splendid examples to mankind, are excelled in constitutional precautions for the maintenance of justice!

There is, indeed, ground to assert, that the contrary principle would be repugnant to that article of our Constitution, which provides, that "no State shall pass any law impairing the obligation of contracts." The spirit of this clause, though the letter of it be restricted to the States individually, must, on fair construction, be considered as a rule for the United States; and if so, could not easily be reconciled with the confiscation or sequestration of private debts in time of war. But it is a pity, that so important a principle should have been left to inference and implication, and should not have received an express and direct sanction.

This position must appear a frightful heresy in the eyes of those who represent the confiscation or sequestration of debts, as our best means of retaliation and coercion, as our most powerful, sometimes as our only, means of defence.

But so degrading an idea will be rejected with disdain, by every man who feels a true and well-informed national pride; by every man who recollects and glories, that in a state of still greater immaturity, we achieved independence without the aid of this dishonorable expedient [1]; that even in a

[1] The federal government never resorted to it; and a few only of the State Governments stained themselves with it. It may, perhaps, be said, that the Federal Government had no power on the subject; but the reverse of this is truly the case. The Federal Government alone had power. The State Governments had none, though some of them

revolutionary war, a war of liberty against usurpation, our national councils were too magnanimous to be provoked or tempted to depart so widely from the path of rectitude; by every man, in fine, who, though careful not to exaggerate, for rash and extravagant projects, can nevertheless fairly estimate the real resources of the country, for meeting dangers which prudence cannot avert.

Such a man will never endure the base doctrine, that our security is to depend on the tricks of a swindler. He will look for it in the courage and constancy of a free, brave, and virtuous people—in the riches of a fertile soil—an extended and progressive industry—in the wisdom and energy of a well-constituted and well-administered government—in the resources of a solid, if well-supported, national credit—in the armies, which, if requisite could be raised—in the means of maritime annoyance, which if necessary, could be organized, and with which we could inflict deep wounds on the commerce of a hostile nation. He will indulge an animating consciousness, that while our situation is not such as to justify our courting imprudent enterprises neither is it such as to oblige us, in any event, to stoop to dishonorable means of security, or to substitute a crooked and piratical policy, for the manly energies of fair and open war.

That is the consequence of the favorite doctrine that the confiscation or sequestration of private debts

undertook to exercise it. This position is founded on the solid ground that the confiscation or sequestration of the debts of an enemy is a high act of reprisal and war, necessarily and exclusively incident to the power of making war, which was always in the Federal Government.

is our most powerful, if not our only, weapon of defence; Great Britain is the sole power against whom we could wield it, since it is to her citizens alone, that we are largely indebted. What are we to do, then, against any other nation which might think fit to menace us? Are we, for want of adequate means of defence, to crouch beneath the uplifted rod, and, with abject despondency, sue for mercy? Or has Providence guaranteed us especially against the malice or ambition of every power on earth, except Great Britain?

It is at once curious and instructive to mark the inconsistencies of the disorganizing sect. Is the question, to discard a spirit of accommodation, and rush into war with Great Britain? Columns are filled with the most absurd exaggerations, to prove that we are able to meet her, not only on equal, but superior terms. Is the question, whether a stipulation against the confiscation or sequestration of private debts ought to have been admitted into the treaty? Then are we a people destitute of the means of war, with neither arms, nor fleets, nor magazines—then is our best, if not our only, weapon of defence, the power of confiscating or sequestrating the debts which are due to the subjects of Great Britain; in other words, the power of committing fraud, of violating the public faith, of sacrificing the principles of commerce, of prostrating credit. Is the question, whether free ships shall make free goods, whether naval stores shall or shall not be deemed contraband? Then is the appeal to what is called the *modern* law of nations; then is the cry, that recent usage has

changed and mitigated the rigor of ancient maxims. But is the question, whether private debts can be rightfully confiscated or sequestered? Then ought the utmost rigor of the ancient doctrine to govern, and modern usage and opinion to be discarded. The old rule or the new is to be adopted or rejected, just as may suit their convenience.

An inconsistency of another kind, but not less curious, is observable in positions, repeatedly heard from the same quarter, namely, that the sequestration of debts is the only peaceable means of doing ourselves justice and avoiding war. If we trace the origin of the pretended right to confiscate or sequester debts, we find it, in the very authority, principally relied on to prove it, to be this (Bynkershoeck, *Quæstiones Juris Publici*, I. s. 2): "Since it is the *condition* of WAR, that ENEMIES may be deprived of all their rights, it is reasonable, that everything of an enemy's, found among his enemies, should change its owner, and go to the treasury." Hence it is manifest, that the right itself, if it exist, presupposes, as the *condition* of its exercise, an *actual state of war*, the relation of *enemy to enemy*. Yet we are fastidiously and hypocritically told, that this high and explicit mode of war, is a peaceable means of doing ourselves justice and avoiding war. Why are we thus told? Why is this strange paradox attempted to be imposed upon us? Why, but that it is the policy of the conspirators against our peace, to endeavor to disguise the hostilities, into which they wish to plunge us, with a specious outside, and to precipitate us down the precipice of war, while

we imagine we are quietly and securely walking along its summit.

Away with these absurd and incongruous sophisms! Blush, ye apostles of temerity, of meanness, and of deception! Cease to beckon us to war, and at the same time to freeze our courage by the cowardly declaration that we have no resource but in fraud! Cease to attempt to persuade us that peace may be obtained by means which are unequivocal acts of war. Cease to tell us that war is preferable to dishonor, and yet, as our first step, to urge us into irretrievable dishonor. A magnanimous, a sensible people cannot listen to your crude conceptions. Why will ye persevere in accumulating ridicule and contempt upon your own heads?

In the further observations which I shall offer on this article, I hope to satisfy, not the determined leaders or instruments of faction, but all discerning men, all good citizens, that, instead of being a blemish, it is an ornament to the instrument in which it is contained; that it is as consistent with true policy as with substantial justice; that it is, in substance, not without precedent in our other treaties, and that the objections to it are futile.

CAMILLUS.

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## NO. XIX

1795.

The objects protected by the tenth article are classed under four heads: 1, Debts of individuals to individuals; 2, property of individuals in the public funds; 3, property of individuals in public banks;

4, property of individuals in private banks. These, if analyzed, resolve themselves, in principle, into two discriminations, viz.: private debts, and private property in public funds. The character of private property prevails throughout. No property of either government is protected from confiscation or sequestration by the other. This last circumstance merits attention, because it marks the true boundary.

The propriety of the stipulation will be examined under these several aspects: the right to confiscate or sequestrate private debts or private property in public funds, on the ground of reason and principle; the right as depending on the opinions of jurists and on usage; the policy and expediency of the practice; the analogy of the stipulation with stipulations in our other treaties, and in treaties between other nations.

First, as to the right on the ground of reason and principle.

The general proposition on which it is supported is this: "That every individual of a nation with whom we are at war, wheresoever he may be, is our enemy, and his property of every kind, in every place, liable to capture by right of war."

The only exception admitted to this rule respects property within the jurisdiction of a neutral state; but the exception is referred to the right of the neutral nation, not to any privilege which the situation gives to the enemy proprietor.

Reason, if consulted, will suggest another exception. This regards all such property as the laws of a country permit foreigners to acquire within it or

to bring into it. The right of holding or having property in a country always implies a duty on the part of its government to protect that property, and to secure to the owner the full enjoyment of it. Whenever, therefore, a government grants permission to foreigners to acquire property within its territories, or to bring and deposit it there, it tacitly promises protection and security. It must be understood to engage that the foreign proprietor, as to what he shall have acquired or deposited, shall enjoy the rights, privileges, and immunities of a native proprietor, without any other exceptions than those which the established laws may have previously declared. How can any thing else be understood? Every state, when it has entered into no contrary engagement, is free to permit or not to permit foreigners to acquire or bring property within its jurisdiction; but if it grant the right, what is there to make the tenure of the foreigner different from that of the native, if antecedent laws have not pronounced a difference? Property, as it exists in civilized society, if not a creature of, is, at least, regulated and defined by, the laws. They prescribe the manner in which it shall be used, alienated, or transmitted; the conditions on which it may be held, preserved, or forfeited. It is to them we are to look for its rights, limitations, and conditions. No condition of enjoyment, no cause of forfeiture, which they have not specified, can be presumed to exist. An extraordinary discretion to resume or take away the thing, without any personal fault of the proprietor, is inconsistent with the notion of property.

This seems always to imply a contract between the society and the individual, that he shall retain and be protected in the possession and use of his property so long as he shall observe and perform the conditions which the laws have annexed to the tenure. It is neither natural nor equitable to consider him as subject to be deprived of it for a cause foreign to himself; still less for one which may depend on the volition or pleasure, even of the very government to whose protection it has been confided; for the proposition which affirms the right to confiscate or sequester does not distinguish between offensive or defensive war; between a war of ambition on the part of the power which exercises the right, or a war of self-preservation against the assaults of another.

The property of a foreigner placed in another country, by permission of its laws, may justly be regarded as a deposit, of which the society is the trustee. How can it be reconciled with the idea of a trust, to take the property from its owner, when he has personally given no cause for the deprivation?

Suppose two families in a state of nature, and that a member of one of them had, by permission of the head of the other, placed in his custody some article belonging to himself; and suppose a quarrel to ensue between the two heads of families, in which the member had not participated by his immediate counsel or consent—would not natural equity declare the seizure and confiscation of the deposited property to be an act of perfidious rapacity?

Again—suppose two neighboring nations, which

had not had intercourse with each other, and one of them opens its ports and territories for the purpose of commerce, to the citizens of the other, proclaiming free and safe ingress and egress—suppose afterward a war to break out between the two nations, and the one which had granted that permission to seize and convert to its own use the goods and credits of the merchants of the other, within its dominion. What sentence would natural reason, unwarped by particular dogmas, pronounce on such conduct? If we abstract ourselves from extraneous impressions, and consult a moral feeling, we shall not doubt that the sentence would inflict all the opprobrium and infamy of violated faith.

Nor can we distinguish either case, in principle, from that which constantly takes place between nations, that permit a commercial intercourse with each other, whether with or without national compact. They equally grant a right to bring into and carry out of their territories the property which is the subject of the intercourse, a right of free and secure ingress and egress; and in doing this they make their territories a sanctuary or asylum, which ought to be inviolable, and which the spirit of plunder only could have ever violated.

There is no parity between the case of the persons and goods of enemies found in our own country and that of the persons and goods of enemies found elsewhere. In the former there is a reliance upon our hospitality and justice; there is an express or implied safe conduct; the individuals and their property are in the custody of our faith; they have no

power to resist our will; they can lawfully make no defence against our violence; they are deemed to owe a temporary allegiance; and for endeavoring resistance would be punished as criminals, a character inconsistent with that of an enemy. To make them a prey is, therefore, to infringe every rule of generosity and equity; it is to add cowardice to treachery. In the latter case there is no confidence whatever reposed in us; no claim upon our hospitality, justice, or good faith; there is the simple character of enemy, with entire liberty to oppose force to force. The right of war consequently to attack and seize,—whether to obtain indemnification for any injury received—to disable our enemy from doing us further harm, to force him to reasonable terms of accommodation, or to repress an overbearing ambition, exists in full vigor, unrestrained and unqualified by any trust or duty on our part. In pursuing it, though we may inflict hardship, we do not commit injustice.

Moreover, the property of the foreigner within our country may be regarded as having paid a valuable consideration for its protection and exemption from forfeiture; that which is brought in, commonly enriches the revenue by a duty of entry. All that is within our territory, whether acquired there or brought there, is liable to contributions to the treasury, in common with other similar property. Does there not result an obligation to protect that which contributes to the expense of its protection? Will justice sanction, upon the breaking out of a war, the confiscation of a property, which, during peace,

serves to augment the resources and nourish the prosperity of a state?

The principle of the proposition gives an equal right to subject the person as the property of the foreigner to the rigors of war. But what would be thought of a government which should seize all the subjects of its enemy found within its territory, and commit them to durance, as prisoners of war? Would not all agree that it had violated an asylum which ought to have been sacred? That it had trampled upon the laws of hospitality and civilization? That it had disgraced itself by an act of cruelty and barbarism? [1] Why would it not be equally reprehensible to violate the asylum which had been given to the property of those foreigners?

Reason, left to its own lights, would answer all these questions in one way, and severely condemn the molestation, on account of a national contest, as well of the property as person of a foreigner found in our country, under the license and guaranty of the laws of previous amity.

The case of property in the public funds is still stronger than that of private debts. To all the sanctions which apply to the latter, it adds that of an express pledge of the public faith to the foreign holder of stock.

The constituting of a public debt or fund, transferable without limitation or distinction, amounts to a promise to all the world, that whoever, foreigner or citizen, may acquire a title to it, shall enjoy the

[1] All that can rightfully be done is to oblige the foreigners, who are subjects of our enemy, to quit our country.

benefit of what is stipulated. Every transferee becomes, by the act of transfer, the immediate proprietor of the promise. It inures directly to his use, and the foreign promisee no more than the native, can be deprived of that benefit, except in consequence of some act of his own, without the infraction of a positive engagement.

Public debt has been truly defined, "*A property subsisting in the faith of government.*" Its essence is promise. To confiscate or sequester it is emphatically to rescind the promise given, to revoke the faith plighted. It is impossible to separate the two ideas of a breach of faith, and the confiscation or sequestration of a property subsisting only in the faith of the government by which it is made.

When it is considered that the promise made to the foreigner is not made to him in the capacity of member of another society, but in that of citizen of the world, or of an individual in the state of nature, the infraction of it towards him, on account of the fault, real or pretended, of the society to which he belongs, is the more obviously destitute of color. There is no real affinity between the motive and the consequence. There is a confounding of relations. The obligation of a contract can only be avoided by the breach of a condition express or implied, which appears or can be presumed to have been within the contemplation of both parties, or by the personal fault or crime of him to whom it is to be performed. Can it be supposed that a citizen of one country would lend his money to the government of another, in the expectation that a war between the two

countries, which, without or against their will, might break out the next day, could be deemed a sufficient cause of forfeiture?

The principle may be tested in another way. Suppose one government indebted to another in a certain sum of money, and suppose the creditor government to borrow of the citizen of the other an equal sum of money. When he came to demand payment, would justice, would good faith, permit the opposing to his claim, by way of set-off, the debt due from his government? Who would not revolt at such an attempt? Could not the individual creditor answer with conclusive force, that in a *matter of contract* he was not responsible for the society of which he was a member, and that the debts of the society were not a proper set-off against his private claim?

With what greater reason could his claim be refused on account of an injury, which was a cause of war, received from his sovereign, and which had created on the part of the sovereign a debt of reparation? It were certainly more natural and just to set off a debt due by contract to the citizen of a foreign country against a debt due by contract from the sovereign of that country, than to set it off against a vague claim of indemnification for an injury or an aggression of which we complain, and of which the reality or justice is seldom undisputed on the other side.

The true rule which results from what has been said, and which reason sanctions with regard to the right of capture, is this: "It may be exercised every-

where *except within a neutral jurisdiction*[1] *or where the property is under the protection of our own laws"*; and it may perhaps be added that it always supposes the possibility of *rightful* combat, of attack, and defence.

These exceptions involve no refinement; they depend on obvious considerations, and are agreeable to common sense and to nature; the spontaneous feelings of equity accord with them. It is, indeed, astonishing that a contrary rule should ever have been countenanced by the opinion of any jurist, or by the practice of any civilized nation.

We shall see in the next number how far either has been the case, and what influence it ought to have upon the question.

CAMILLUS.

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## NO. XX

1795.

The point next to be examined is the right of confiscation or sequestration, as depending on the opinions of jurists and on usage.

To understand how far these ought to weigh, it is requisite to consider what are the elements or ingredients which compose what is called the law of nations.

The constituent parts of this system are: 1. The *necessary* or internal law, which is the *law of nature* applied to nations; or that system of rules for

[1] There are exceptions to this exception; but they depend on special circumstances, which admit the principal exception, and need not be particularized.

regulating the conduct of nation to nation, which reason deduces from the principles of natural right, as relative to political societies or states. 2. The *voluntary* law, which is a system of rules resulting from the equality and independence of nations, and which, in the administration of their affairs, and the pursuit of their pretensions, proceeding on the principle of their having no common judge upon earth, attributes equal validity, as to external effects, to the measures or conduct of one as of another, without regard to the intrinsic justice of those measures or that conduct. Thus captures, in war, are as valid, when made by the party in the wrong, as by the party in the right. 3. The *pactitious* or *conventional* law, or that law which results from a treaty between two or more nations. This is evidently a particular, not a general law, since a treaty or pact can only bind the contracting parties; yet, when we find a provision universally pervading the treaties between nations, for a length of time, as a kind of formula, it is high evidence of the general law of nations. 4. The customary law, which consists of those rules of conduct, that, in practice, are respected and observed among nations. Its authority depends on usage, implying a tacit consent and agreement. This also is a particular, not a general law, obligatory only on those nations whose acquiescence has appeared, or, from circumstances, may fairly be presumed. Thus, the customary law of Europe may not be that of a different quarter of the globe. The three last branches are sometimes aggregately denominated the *positive* law of nations.

The two first are discoverable by reason; the two last depend on proof, as matters of fact. Hence the opinions of jurists, though weighing, as the sentiments of judicious or learned men, who have made the subject a particular study, are not conclusive, as authorities. In regard to the *necessary* and *voluntary* law, especially, they may be freely disregarded, unless they are found to be adopted and sanctioned by the practice of nations. For where REASON is the guide, it cannot properly be renounced for mere OPINION, however respectable. As witnesses of the customary laws, their testimony, the result of careful researches, is more particularly entitled to attention.

If, then, it has been satisfactorily proved, as the dictate of sound reason, that private debts, and private property in public funds, are not justly liable to confiscation or sequestration, an opposite opinion of one or more jurists could not control the conclusion in point of principle. So far as it may attest a practice of nations, which may have introduced a positive law on the subject, the consideration may be different. It will then remain to examine, upon their own and other testimony, whether that practice be so general as to be capable of varying a rule of reason, by the force of usage; and whether it still continues to bear the same character, or has been weakened or done away by some recent or more modern usage.

I will not avail myself of a position, advanced by some writers, that usage, if derogating from the principles of natural justice, is null, further than to

draw this inference: that a rule of right, deducible from them, cannot be deemed to be altered by usage, partially contradicted, fluctuating.

With these guides, our further inquiries will serve to confirm us in the negative of the pretended right to confiscate or sequester in the cases supposed.

The notion of this right is evidently derived from the Roman law. It is seen there, in this peculiar form: "Those things of an enemy which are among us, belong not to the state, but to the first occupant,"[1] which seems to mean, that the things of an enemy, at the commencement of the war, found in our country, may be seized by any citizen, and will belong to him who first gets possession. It is known that the maxims of the Roman law are extensively incorporated into the different codes of Europe; and particularly, that the writers on the law of nations have borrowed liberally from them. This source of the notion does not stamp it with much authority. The history of Rome proves that war and conquest were the great business of that people, and that, for the most part, commerce was little cultivated. Hence it was natural that the rights of war should be carried to an extreme, unmitigated by the softening and humanizing influence of commerce. Indeed the world was yet too young—moral science too much in its cradle—to render the Roman jurisprudence a proper model for implicit imitation; accordingly, in this very particular of the rights of war, it seems to have been equally a rule of the Roman law, "That those who go into a foreign country in the time of

[1] *Digest.*, xli., tit. i.: "Et quæ res hostiles apud nos," etc.

peace, if war is suddenly kindled, are made the slaves of those among whom, now become enemies by ill fortune, they are apprehended." [1] This right of capturing the property and of making slaves of the persons of enemies is referred, as we learn from *Cicero*, to the right of killing them; which was regarded as absolute and unqualified, extending even to women and children. Thus it would seem that, on the principle of the Roman law, we might rightfully kill a foreigner who had come into our country during peace, and was there at the breaking out of war with his country. Can there be a position more horrible, more detestable?

The improvement of moral science in modern times, restrains the right of killing an enemy to the time of battle or resistance, except by way of punishment for some enormous breach of the law of nations, or for self-preservation, in case of immediate and urgent danger; and rejects altogether the right of imposing slavery on captives.

Why should there have been a hesitation to reject other odious consequences of so exceptionable a principle? What respect is due to maxims which have so inhuman a foundation?

And yet a deference for those maxims has misled writers who have professionally undertaken to teach the principles of national ethics; and the spirit of rapine has continued, to a late period, to consecrate the relics of ancient barbarism with too many precedents of imitation. Else it would not now be a

[1] "In pace qui pervenerunt ad alteros, si bellum subito exarcisset, eorum servi efficiuntur, apud quos jam hostes suo facto deprehenduntur." *Digest.*, lib. xlix., tit. xv., l. xii.

question with any, "Whether the person or property of a foreigner, being in our country with permission of the laws of peace, could be liable to molestation or injury by the laws of war, merely on account of the war?"

Turning from the ancients to the moderns, we find, that the learned Grotius quotes and adopts, as the basis of his opinions, the rules of the Roman law; though he, in several particulars, qualifies them, by the humane innovations of later times.

On the very question of the right to confiscate or sequester private debts, his opinion, as far as it appears, seems to be at variance with his premises, steering a kind of middle course. His expressions (L. III., C. XX., Sec. 16.) are these: "Those debts which are due to private persons, at the beginning of the war, are not to be accounted forgiven (that is, when peace is made); for these are not acquired by the right of war, but only *forbidden to be demanded* in time of war; therefore, the *impediment* being removed, that is, the war ended, they retain their full force." His idea appears from this passage to be, that the right of war is limited to the arresting of the payment of private debts during its continuance, and not to the confiscation or annihilation of the debt. Nor is it clear, whether he means, that this arrestation is to be produced by a special act of prohibition, or by the operation of some rule of law, which denies to an alien enemy a right of action. This feeble and heterogeneous opinion may be conceived to have proceeded from a conflict between a respect for ancient maxims, and the impression of more enlightened

views, inculcated by the principles of commerce and civilization.

Bynkershoeck is more consistent. Adopting, with Grotius, the rule of the Roman law in its full vigor, he is not frightened at the consequences, but follows them throughout. Hence he bestows a chapter upon the defence of the proposition, quoted in a former number, to wit: that [1] "Since it is the condition of war, that enemies may, with full right, be despoiled and proscribed, it is reasonable that whatsoever things of an enemy are found among his enemies, should change their owner and go to the treasury"; and in several places he expressly implies the rule to *things in action*, or debts and credits, as well as to things in possession.

In confirmation of his doctrine, he adduces a variety of examples, which embrace a period of something more than a century, beginning in the year 1556, and ending in the year 1657, and which comprehends, as actors on the principle which he espouses, France, Spain, the States General, Denmark, the bishops of Cologne and Munster. But he acknowledges that the right has been questioned; and notes particularly, that when the king of France and the bishops of Munster and Cologne, in the year 1563, confiscated the debts which their subjects owed to the confederate Belgians, the States General, by an edict of the 6th of July, of that year, censured the proceeding, and decreed that those debts could not be paid

[1] *Quæstionum Juris Public.*, liber i., caput vii.: "Cum ea sit belli conditio ut hostes sint omni jure spoliati proscriptique, rationis est quascumque res hostium apud hostes inventas, dominum mutare et fisco cedere."

but to the true creditors; and that the exaction of them, whether by force or with consent, was not to be esteemed valid.

If from the great pains which appear to have been taken by this learned writer, to collect examples in proof of his doctrine, we are to conclude that the collection is tolerably complete, we are warranted in drawing this inference: that he has not cured any defect, which reason may discern in his principles, by any thing like the evidence of such a general, uniform, and continued usage, as is requisite to introduce *a rule* of the positive law of nations, in derogation from the natural.

A minority only of the powers of Europe are shown to have been implicated in the practice; and among the majority, not included, are several of the most considerable and respectable. One of these, Great Britain, is represented as having acquiesced in it, in the treaties of peace, between her and some of the powers who went into the practice, to her detriment, by relinquishing the claim of restitution. But war must, at length, end in peace; and the sacrifice a nation makes to the latter is a slight argument of her consent to the principle of the injuries which she may have sustained. I have not been able to trace a single instance in which Great Britain has, herself, set the example of such a practice; nor could she do it, as has elsewhere appeared, without contravening an article of Magna Charta, unless by way of reprisal for the same thing done towards her. The suggestion of an instance in the present war with France, will, hereafter, be examined. In such a question,

the practice of a nation, which has, for ages, figured preëminently in the commercial world, is entitled to particular notice.

It is not unworthy of remark, that the common law of England, from its earliest dawnings, contradicted the rule of the Roman law. It exempted from seizure, by a subject of England, the property of a foreigner brought there before a war; but gave to the first seizer, or occupant, the property which came there after the breaking out of a war. The noble principles of the common law cannot cease to engage our respect, while we have before our eyes so many monuments of their excellence in our own jurisdiction.

It also merits to be dwelt upon, that the United Netherlands, for some time the first, and long only the second in commercial consequence, formally disputed the right, and condemned the practice of confiscating private debts, though themselves, in some instances, guilty of it.

And it is likewise a material circumstance, that Bynkershoeck, who seems to have written in the year 1737, does not adduce any precedent later than the year 1667, seventy years before his publication.

The subsequent period will, it is believed, be found upon strict inquiry, equally barren of similar precedents. The exceptions are so few,[1] that we may fairly assert, that there is the negative usage of near a century and a half, against the pretended right. This negative usage of a period the most enlightened

[1] The case of Prussia and the Silesia loan, is the only one I have found.

as well as the most commercial in the annals of the world, is of the highest authority. The former usage, as being partial and with numerous exceptions, was insufficient to establish a rule. The contrary usage, or the renunciation of the former usage, as being general, as attended with few or no exceptions, is sufficient even to work a change in the rigor of an ancient rule, if it could be supposed to have been established. Much more is it sufficient to confirm and enforce the lesson of reason, and to dissipate the clouds which error, and some scattered instances of violence and rapine, may have produced.

Of the theoretical writers whom I had an opportunity of consulting, Vatel is the only remaining one who directly treats the point. His opinion has been said to favor the right to confiscate and sequester. But when carefully analyzed, it will add to the proofs of the levity with which the opposers of the treaty make assertions.

After stating, among other things, that "war gives the same right over any sum of money due by a neutral nation to our enemy, as it can give over his other goods," he proceeds thus: "When Alexander, by conquest, became absolute master of Thebes, he remitted to the Thessalians, a hundred talents, which they owed to the Thebans. The sovereign has naturally the same right over what his subjects may be indebted to his enemies; therefore he may confiscate debts of this nature, if the term of payment happen in the time of war; or, at least, he may prohibit his subjects from paying, while the war lasts. But at present, in regard to the advantages and safety of

commerce, all the sovereigns of Europe have departed from this rigor. And as this custom has been generally received, he who should act contrary to it, would injure the public faith; for strangers trusted his subjects only from a firm persuasion that the general custom would be observed. The State does not so much as touch the sums which it owes to the enemy. Everywhere in case of a war, funds credited to the public, are exempt from confiscation and seizure." [1]

The first proposition of the above passage amounts to this: that "a sovereign *naturally*, that is, according to the law of nature, may confiscate debts, which his subjects owe to his enemies, if the term of payment happen in the time of war—or, at least, he may prohibit his subjects from paying while the war lasts."

So far as this goes it agrees with the principle which I combat, that there is a natural right to confiscate or sequester private debts in time of war; so far Vatel accords with the Roman law and with Bynkershoeck.

But he annexes a whimsical limitation: "If the term is the time of war"—and there is a marked uncertainty and hesitation—"the sovereign may confiscate, or, at least, he may prohibit his subjects from paying while the war lasts." It is evident that the circumstance of the time of payment can have no influence upon the right. If it reaches to confiscation, which takes away the substance of the thing, the mere incident of the happening of payment must be immaterial. If it is confined to the arresting of

[1] Book III., chap. v., sec. 77.

payment during the war, the reason of the rule, the object being to prevent supplies going to the enemy, will apply it as well to debts which had become payable before the war, as to those which became payable in the war. Whence this inaccuracy in so accurate a thinker? Whence the hesitation about so important a point, as whether the pretended right extends to confiscation or simply to sequestration? They must be accounted for, as in another case, by the conflict between respect for ancient maxims and the impressions of juster views, seconded by the more enlightened policy of modern times.

But while Vatel thus countenances, in the first part of the passage, the opinion that the natural law of nations authorizes the confiscation or sequestration of private debts, in what immediately follows he most explicitly and unequivocally informs us that the rule of that law in this respect has been abrogated by modern usage or custom; in other words, that the modern customary law has changed in this particular the ancient natural law. Let his own words be consulted: "At present," says he, "in regard to the advantage and safety of commerce, all the sovereigns of Europe have departed from this rigor; and as this custom has been generally received, he who should act contrary to it would injure the public faith; for strangers trusted his subjects only from the firm persuasion that the general custom would be observed."

This testimony is full, that there is a general custom received and adopted by all the sovereigns of Europe, which obviates the rigor of the ancient rule;

the non-observance of which custom would violate the public faith of a nation, as being a breach of an implied contract, by virtue of the custom, upon the strength of which foreigners trust his subjects.

Language cannot describe more clearly a rule of the customary law of nations, the essence of which, we have seen, is general usage, implying a tacit agreement to conform to the rule. The one alleged is denominated a custom generally received, a general custom; all the sovereigns of Europe are stated to be parties to it, and it is represented as obligatory on the public faith, since this would be injured by a departure from it.

The consequence is that if the right pretended did exist by the natural law, it has given way to the customary law; for it is a contradiction, to call that a right which cannot be exercised without breach of faith. The result is, that by the present customary law of nations, within the sphere of its action, there is no right to confiscate or sequester private debts in time of war. The reason or motive of which law is the advantage and safety of commerce.

As to private property in public funds, the right to meddle with them is still more emphatically negatived. "That state does not *so much as touch* the sums it owes to the enemy. *Everywhere*, in case of a war, funds credited to the public are exempt from confiscation and seizure." These terms manifestly exclude sequestration as well as confiscation.

In another place, the author gives the reason of this position, Book II., Chap. XVIII. "In reprisals, the goods of a subject are seized in the same manner

as those of the state or the sovereign. Every thing that belongs to the nation is liable to reprisals as soon as it can be seized, *provided it be not a deposit trusted to the public faith.* This DEPOSIT is found in our hands, only in consequence of that *confidence*, which the proprietor has put in our good faith, and it ought to be respected, even in case of open war. Thus it is usual to behave in France, England, and elsewhere, with respect to the money which foreigners have placed in the public funds." The same principle, if he had reflected without bias, would have taught him, that reprisals could rightfully extend to nothing that had been committed with their permission, to the custody and guardianship of our laws, during a state of peace; and, consequently, that no property of our enemy which was in our country before the breaking out of the war, is justly liable to them. For is not all such property *equally a deposit trusted to the public faith?* What foreigner would acquire property in our country, or bring and lodge it there, but in the *confidence*, that in case of war, it would not become an object of reprisals? Why then resort to custom for a denial of the right to confiscate or sequester private debts? Why not trace it to the natural injustice and perfidy of taking away in war what a foreigner is permitted to own and have among us in peace? Why ever consider that as a natural right which was contrary to good faith tacitly pledged? This is evidently the effect of too much deference to ferocious maxims of antiquity, of undue complaisance to some precedents of modern rapacity.

He had avoided the error by weighing maturely the

consequences of his own principle in another case: "He who declares war (says he) does not confiscate the *immovable* goods possessed in his country by his enemy's subjects. *In permitting them to purchase and possess those goods*, he has, in this respect, admitted them into the number of his subjects,"—that is, he has admitted them to a like privilege with his subjects, as to the real property they were permitted to acquire and hold. But why should a less privilege attend the license to purchase, possess, or have other kinds of property in his country? The reason, which is the permission of the sovereign, must extend to the protection of one kind of property as well as another, if the permission extends to both.

Vatel advances in this and in the passage quoted immediately before it, the true principles which ought to govern the question—though he does not pursue them into their consequences; else he would not have deduced the exemption of private debts, from confiscation or sequestration, from the customary law of nations, but would have traced it to the natural or necessary law, as founded upon the obligations of good faith; upon the tacit promise of security connected with the permission to acquire property within, or bring property into, our country; upon the protection which every government owes to a property of which it legalizes the acquisition, or the deposit within its jurisdiction; and in case of *immovable* goods or real estate, of which he admits a right to sequester the *income*, to prevent its being remitted to the enemy, he would have perceived the necessity of leaving this effect to be produced by the

obstructions intrinsically incident to a state of war, —since there is no reason why the income should be less privileged than the substance of the thing.

It appears, then, that the doctrine of Vatel, collectively taken, amounts to this: that there is a natural right of war in certain cases to confiscate or sequester enemy's property found within our country; but that, on motives relative to commerce and public credit, the customary law of Europe has restrained that right, as to *private debts*, and *private property*, in public funds. His opinion, therefore, favors the principle of the article of the treaty under examination, as consonant with the present European law of nations; and it is an opinion of greater weight than any that can be cited, as well on account of the capacity, diligence, information, and the precision of ideas, which characterize the work in which it is contained, as on account of the recency of that work.[1]

A question may be raised—Does this customary law of nations, as established in Europe, bind the United States? An affirmative answer to this is warranted by conclusive reasons.

1. The United States, when a member of the British Empire, were, in this capacity, a party to that law, and not having dissented from it, when they became independent, they are to be considered as having continued a party to it. 2. The common law of England, which was and is in force in each of these States, adopts the law of nations, the positive equally with the natural, as a part of itself. 3. Ever since we have been an independent nation, we have ap-

[1] It appears to have been written about the year 1760.

pealed to and acted upon the *modern* law of nations as understood in Europe—various resolutions of Congress during our revolution, the correspondence of executive officers, the decisions of our courts of admiralty, all recognized this standard. 4. Executive and legislative acts, and the proceedings of our courts, under the present government, speak a similar language. The President's proclamation of neutrality, refers expressly to the *modern* law of nations, which must necessarily be understood as that prevailing in Europe, and acceded to by this country; and the general voice of our nation, together with the very arguments used against the treaty, accord in the same point. It is indubitable, that the customary law of European nations is as a part of the common law, and, by adoption, that of the United States.

But let it not be forgotten, that I derive the vindication of the article from a higher source, from the natural or necessary law of nature—from the eternal principles of morality and good faith.

There is one more authority which I shall cite in reference to a part of the question, property in the public funds. It is a report to the British king in the year 1753, from Sir George Lee, judge of the prerogative court, Dr. Paul, advocate-general in the courts of civil law, Sir Dudley Rider and Mr. Murray, attorney- and solicitor-general,[1] on the subject of the Silesia loan, sequestered by the king of Prussia, by way of reprisal, for the capture and condemnation of some Prussian vessels. This report merits all the respect

[1] Sir George Lee, was afterward the very celebrated Chief Justice Lee, and Mr. Murray was the late Lord Mansfield.

which can be derived from consummate knowledge and ability in the reporters; but it would lose much of its weight from the want of impartiality, which might fairly be imputed to the officers of one of the governments interested in the contest, had it not since received the confirming eulogies of impartial and celebrated foreign writers. Among these, Vatel calls it an excellent piece on the law of nations.

The following is an extract: "The king of Prussia has pledged his royal word to pay the Silesia debt to *private men*. It is negotiable, and many parts of it have been assigned to the subjects of other powers. It will not be easy *to find an instance*, where a prince has thought fit to make reprisals upon *a debt due from himself to private men*. There is a *confidence that this will not be done*. A private man lends money to a prince upon an *engagement of honor; because a prince cannot be compelled, like other men, in an adversary way, by a court of justice*. So scrupulously did England and France adhere to this *public faith*, that even during the war, they suffered no inquiry to be made, whether any part of the public debt was due to the subjects of the enemy, though it is certain many English had money in the French funds, and many French had money in ours."

The universal obligation of good faith is here reinforced on a special ground, by the *point of honor;* to confirm the position that money which a sovereign or State owes to private men, is not a proper object of reprisals.

This case of the Silesia debt is the only example, within the present century, prior to the existing war,

which I have been able to trace, violating the immunity of private debts, or private property, in public funds. It is a precedent that can have little weight, not only from singularity, but from the character of its author. Frederick was a consummate general, a profound statesman; but he was very far from being a severe moralist. This is not the only instance in which he tarnished his faith; and the friends of his fame must regret that he could not plead on the occasion those mighty and dazzling reasons of state, which are the specious apologies for his other aberrations.

It is asserted that the present war of Europe affords examples of the practice, which I reprobate, and that Great Britain herself has given one. The present war of Europe is of so extraordinary a complexion, and has been conducted, in all respects, upon such extraordinary principles, that it may truly be regarded as an exception to all general rules, as a precedent for nothing. It is rather a beacon, warning mankind to shun the pernicious examples which it sets, than a model inviting to imitation. The human passions, on all sides, appear to have been wrought up to a pitch of frenzy, which has set reason, justice, and humanity at defiance.

Those who have nevertheless thought fit to appeal to the examples of this very anomalous war, have not detailed to us the precise nature or course of the transactions to which they refer; nor do I know that sufficient documents have appeared in this country to guide us in the inquiry.

The imperfect evidence which has fallen under my

observation, respects France and Great Britain, and seems to exhibit these facts:

France passed a decree sequestering the property of the subjects of the powers at war with her; and in the same or another decree, obliged all those of her citizens, who had moneys owing to them in foreign countries, to draw bills upon their debtors, and to furnish those bills to the Government, by way of loan, or upon certain terms of payment.

The Government of Great Britain, in consequence of this proceeding, passed ten different acts, the objects of which were to prevent the payment of those bills, and to secure the sums due for the benefit of the original creditors. These acts appoint certain commissioners, to whom reports are to be made of all French property in the hands of British subjects, and who are empowered to receive and sell goods and other effects, to collect debts and to deposit the proceeds in the bank of London, or in other safe keeping, if preferred or required by parties interested. The moneys deposited are to be invested in the purchase of public stock, together with the interest or dividends arising from time to time, to be eventually accounted for to the proprietors. The commissioners have, likewise, a discretion, upon demand, to deliver over their effects and moneys to such of the proprietors as do not reside within the French dominions.

I shall not enter into a discussion of the propriety of these acts of Great Britain. It is sufficient to observe that they are attended with circumstances which very essentially discriminate them from the thing for which they were quoted. The act of the

French Government was in substance a compulsory assumption of all the property of its citizens in foreign countries. This extraordinary measure presented two options to the governments of those countries: One to consider the transfer as virtually effected, and to confiscate the property as being no longer that of the individuals, but that of the Government of France; the other, to defeat the effect of her plan by buying up the property for the benefit of the original creditors, in exclusion of the drafts which they were compelled to draw. Great Britain appears to have elected the latter course. If we suppose her sincere in the motive, and there is fairness and fidelity in the execution, the issue will be favorable, rather than detrimental, to the rights of private property.

I have said that there was an option to confiscate. A government may rightfully confiscate the property of an adversary government. No principle of justice or policy occurs to forbid reprisals upon the public or national property of an enemy. That case is foreign, in every view, to the principles which protect private property. The exemption stipulated by the tenth article of the treaty is accordingly restricted to the latter.

It appears that the Government of France, convinced by the effect of the experiment that the sequestration of the property of the subjects of her enemies was impolitic, thought fit to rescind it. Thence on the 29th of December, 1794, the convention decreed as follows:

"The decrees concerning sequestration of the property of the subjects of the powers at war with the

republic, are annulled. Such sums as have been paid by French citizens into the treasury, in consequence of those decrees, will be reimbursed."

In the course of the debates upon this decree, it was declared that the decrees which it was to repeal *had prepared the ruin of commerce*, and had severed, *against the rights of nations*, the *obligations* of merchants in different States. This is a direct admission that the sequestration was contrary to the law of nations.

As far as respects France, then, the precedent, upon the whole, is a strong condemnation of the pretended right to confiscate or sequester. This formal renunciation of the ground which was at first taken, is a very emphatic protest against the principle of the measure. It ought to serve us too as an instructive warning against the employment of so mischievious and disgraceful an expedient. And as to England, as has been shown, the precedent is foreign to the question.

Thus we perceive, that *opinion* and *usage*, far from supporting the right to confiscate or sequester private property, on account of national wars, when referred to the *modern* standard, turn against that right, and coincide with the principle of the article of the treaty under examination.

What remains to be offered will further illustrate its propriety, and reconcile it to all reflecting men.

CAMILLUS.

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## NO. XXI

1795.

Since the closing of my last number, I have accidentally turned to a passage of Vatel, which is so

pertinent to the immediate subject of that paper, that I cannot refrain from interrupting the progress of the discussion, to quote it; it is in these words (B. III., Ch. IV., Sec. 63): "The sovereign declaring war can neither detain those *subjects* of the enemy, who are within his dominions at the time of the declaration, *nor their effects*. They came into his country *on the public faith. By permitting them to enter his territories, and continue there he tacitly promised them liberty and security for their return.*" This passage contains, explicitly, the principle which is the general basis of my argument—namely, that the permission to a foreigner to come with his effects into, and acquire others within our country, in time of peace, virtually pledges the public faith for the security of his person and property, in the event of war. How can this be reconciled with the *natural* right (controlled only by the customary law of nations) which this writer admits, to confiscate the debts due by the subjects of a State to its enemies? I ask once more, can there be a natural right to do that which includes a violation of faith?

It is plain, to a demonstration, that the rule laid down in this passage, which is so just and perspicuous as to speak conviction to the heart and understanding, unites the natural with the customary law of nations, in a condemnation of the pretension to confiscate or sequester the private property of our enemy, found in our country at the breaking out of a war.

Let us now proceed to examine the policy and expediency of such a pretension.

In this investigation I shall assume, as a basis of argument, the following position: *That it is advantageous to nations to have commerce with each other.*

Commerce, it is manifest, like any other object of enterprise or industry, will prosper in proportion as it is secure. Its security, consequently, promoting its prosperity, extends its advantages. Security is indeed essential to its having a due and regular course.

The pretension of a right to confiscate or sequester the effects of foreign merchants, in the case in question, is, in its principle, fatal to that necessary security. Its free exercise would destroy external commerce; or, which is nearly the same thing, reduce it within the contracted limits of a game of hazard, where the chance of large profits, accompanied with the great risks, would tempt alone the adventurous and the desperate. Those enterprises, which, from circuitous or long voyages, slowness of sales, incident to the nature of certain commodities, the necessity of credit, or from other causes, demand considerable time for their completion must be renounced. Credit, indeed must be banished from all the operations of foreign commerce; an engine, the importance of which, to its vigorous and successful prosecution, will be doubted by none, who will be guided by experience or observation.

It cannot need amplification, to elucidate the truth of these positions. The storms of war occur so suddenly and so often, as to forbid the supposition, that the merchants of one country would trust their property, to any extent, or for any duration, in another country, which was in the practice of con-

fiscating or sequestering the effects of its enemies, found within its territories, at the commencement of a war. That practice, therefore, would necessarily paralyze and wither the commerce of the country in which it obtained. Accordingly, nations attentive to the cultivation of commerce, which formerly were betrayed, by temporary considerations, into particular instances of that atrocious practice, have been led, by the experience of its mischiefs, to abstain from it in later times. They saw that to have persisted in it would have been to abandon competition on equal terms, in the lucrative and beneficial field of commerce.

It is no answer to this, to say that the exercise of the right might be ordinarily suspended, though the right itself might be maintained, for extraordinary and great emergencies.

In the first place, as the ordinary forbearance of its exercise would be taken by foreigners for evidence of an intention never to exercise it, by which they would be enticed into large deposits, that would not otherwise have taken place; a departure from the general course would always involve an act of treachery and cruelty.

In the second place, the *possibility* of the occasional exercise of such a right, if conceived to exist, would be, at least, a slow poison, conducing to a sickly habit of commerce; and, in a series of time, would be productive of much more evil than could be counterbalanced by any good which it might be possible to obtain in the contemplated emergency, by the use of the expedient.

Let experience decide. Examples of confiscation and sequestration have been given. When did the dread of them prevent a war? When did it cripple an enemy, so as to disable him from exertion, or force him into a submission to the views of his adversary? When did it even sensibly conspire to either of these ends? If it has ever had any such effect, the evidence of it has not come within my knowledge.

It is true, that between Great Britain and the United States, the expectation of such effects is better warranted than perhaps in any other cases that have existed; because we commonly owe a larger debt to that country, than is usual between nations, and there is a relative state of things, which tend to a continuation of this situation.

But how has the matter operated hitherto? In the late war between the two countries, certain States confiscated the debts due from their citizens to British creditors, and these creditors actually suffered great losses. The British Cabinet must have known that it was possible the same thing might happen in another war, and on a more general scale; yet the appearances were extremely strong, at a particular juncture, that it was their plan, either from ill-will, from the belief that popular opinion would ultimately drag our Government into the war, from the union of these two, or from other causes, to force us into hostilities with them. Hence it appears, that the apprehension of acts of confiscation, or sequestration, was not sufficient to deter from hostile views, or to insure pacific dispositions.

It may be pretended, that the menace of this measure, had a restraining influence on the subsequent conduct of Great Britain. But if we ascribe nothing to the measures which our Government actually pursued, under the pressure of the provocations received, we at least find in the course of European events, a better solution of a change of policy in the Cabinet of Great Britain, than from the dread of a legislative piracy on the debts due to their merchants.

The truth unfortunately is, that the passions of men stifle calculation; that nations the most attentive to pecuniary considerations, easily surrender them to ambition, to jealousy, to anger, or to revenge.

For the same reason, the actual experiment of an exercise of the pretended right, by way of reprisal for an injury complained of, would commonly be as inefficacious as the menace of it to arrest general hostilities. Pride is roused; resentment kindled; and where there is even no previous disposition to those hostilities, the probability is that they follow. Nations, like individuals, ill brook the idea of receding from their pretensions under the rod, or of admitting the justice of an act of retaliation or reprisal by submitting to it. Thus we learn, from the king of Prussia himself, that the sequestration of the Silesia debt, instead of procuring the restoration for which it was designed, was on the point of occasioning an open rupture between him and Great Britain, when the supervention of a quarrel with France diverted the storm, by rendering him necessary as an ally.

Perhaps it may be imagined that the practice of confiscation or sequestration would be more efficacious to wound and disable Great Britain, in case of a war, than to prevent it. But this also is a vain chimera! A nation that can, at pleasure, raise by loan twenty millions sterling, would be in little danger of being disconcerted or enfeebled in her military enterprises by the taking away or arresting of three or four millions due to her merchants. Did it produce distress and disorder among those whom it affected and their connections? If that disorder was sufficient to threaten a general derangement of mercantile credit, and, with it, of the public finances, the pending war affords an example, that the public purse or credit could be brought successfully into action for the support of the sufferers. Three or four millions of exchequer bills applied in loans would be likely to suffice to prevent the partial evil from growing into a national calamity.

But we forget that, as far as the interruption of the payment of the debts due to her merchants could be supposed to operate upon Great Britain, war itself would essentially answer the purposes of confiscation or sequestration—by interrupting trade and intercourse, it is in fact in a great degree a virtual sequestration. Remittances to any extent become impracticable. There are few ways in which, on account of the state of war, it is lawful to make them; and debtors are, for the most part, enough disposed to embrace pretexts of procrastination.

The inconvenience of deferred payment would, therefore, be felt by Great Britain, with little mitiga-

tion, from the bare existence of war, without the necessity of our Government incurring the discredit and responsibility of a special interference.

Indeed, as far as the dread of eventual loss can operate, it ought in a great measure to have its effect exclusive of the idea of confiscation. Great Britain must want reflection, not to be sensible, that in making war upon us, she makes war upon her own merchants; by the depredations upon our trade destroying those resources from which they are to be paid. If she be indifferent to this consideration, it will be because she is governed by some motive or passion powerful enough to dispose her to run the risk of the entire loss—in the reliance of obtaining indemnification by the acquisitions of war, or in the terms of peace.

Will it be said that the seizure of the debts would put in the hands of our Government a valuable resource for carrying on the war? This, upon trial, would prove as fallacious as all the rest. Various inducements would prevent debtors from paying into the Treasury. Some would decline it from conscientious scruples, from a doubt of the rectitude of the thing—others, with intent to make a merit with their creditors of the concealment, and to favor their own future credit and advantage—others, from a desire to retain the money in their own employment; and a great number from the apprehension that the treaty of peace might revive their responsibility to the creditors, with the embarrassment to themselves of getting back, as well as they could, the moneys which they had paid into the Treasury. Of

this, our last treaty of peace, in the opinion of able judges, gave an example. These causes and others, which do not as readily occur, would oppose great obstacles to the execution of the measure.

But severe laws, inflicting heavy penalties, might compel it. Experience does not warrant a sanguine reliance upon this expedient, in a case in which great opportunity of concealment is united with strong motives of inclination or interest. It would require an inquisition, justly intolerable to a free people—penalties, which would confound the due proportion between crime and punishment, to detect or to deter from concealment and evasion, and to execute the law. Probably no means less efficacious than a *revolutionary tribunal* and a *guillotine* would go near to answer the end. There are but few, I trust, to whom these would be welcome means.

We may conclude, therefore, that the law would be evaded to an extent which would disappoint the expectations from it, as a resource. Some moneys, no doubt, would be collected; but the probability is that the amount would be insignificant, even in the scale of a single campaign. But, should the collection prove as complete as it ordinarily is between debtor and creditor, it would little, if at all, exceed the expense of one campaign.

Hence we perceive that, regarding the measure either as a mean of disabling our enemies, or as a resource to ourselves, its consequence dwindles, upon a close survey; it cannot pretend to a magnitude which would apologize either for a sacrifice of na-

tional honor or candor, or for a deviation from the true principles of commerce and credit.

But let us take a further view of its disadvantages.

A nation, in case of war, is under no responsibility for the delinquencies or frauds of its citizens, who are debtors to those of its enemy, if it does not specially interfere with the payment of the debts which they owe. But if it interposes its authority to prevent the payment, it gives a claim of indemnification to its adversary for the intervening losses which those delinquencies or frauds may occasion. Whether, on the making of peace, this would be insisted upon or waived, might depend much on the good or ill success of the war; but every thing which adds to the catalogue of our enemy's just pretensions, especially when the fortune of war has been pretty equal, is an evil, either as an additional obstacle to speedy peace, or as an ingredient to render the terms of it less advantageous to ourselves. And it is, therefore, unwise in a government to increase the list of such pretensions, by a measure which, without utility to itself, administers to the indolence of negligent, and to the avidity of fraudulent individuals.

Further—Every species of reprisal or annoyance which a power at war employs, contrary to liberality or justice, of doubtful propriety in the estimation of the law of nations, departing from that moderation which, in later times, serves to mitigate the severities of war, by furnishing a pretext or provocation to the other side to resort to extremities, serves to embitter the spirit of hostilities, and to extend its ravages. War is then apt to become more sanguinary,

more wasting, and every way more destructive. This is a ground of serious reflection to every nation, both as it regards humanity and policy; to this country it presents itself, accompanied with considerations of peculiar force. A vastly extended sea-coast, overspread with defenceless towns, would offer an abundant prey to an incensed and malignant enemy, having the power to command the sea. The usages of modern war forbid hostilities of this kind; and though they are not always respected, yet, as they are never violated, unless by way of retaliation for a violation of them on the other side, without exciting the reprobation of the impartial part of mankind, sullying the glory and blasting the reputation of the party which disregards them, this consideration has, in general, force sufficient to induce an observance of them. But the confiscation or sequestration of private debts, or private property in public funds, now generally regarded as an odious and unwarrantable measure, would, as between us and Great Britain, contain a poignant sting. Its effect to exasperate, in an extreme degree, both the nation and government of that country, cannot be doubted. A disposition to retaliate, is a natural consequence; and it would not be difficult for us to be made to suffer beyond any possible degree of advantage to be derived from the occasion of the retaliation. It were much wiser to leave the property of British subjects an untouched pledge for the moderation of its government in the mode of prosecuting the war.

Besides (as, if requisite, might be proved from the

records of history), in national controversies, it is of real importance to conciliate the good opinion of mankind; and it is even useful to preserve or gain that of our enemy. The latter facilitates accommodation and peace; the former attracts good offices, friendly interventions, sometimes direct support, from others. The exemplary conduct, in general, of our country, in our contest for independence, was probably not a little serviceable to us in this way; it secured to the intrinsic goodness of our cause every collateral advantage, and gave it a popularity among nations, unalloyed and unimpaired, which even stole into the cabinets of princes. A contrary policy tends to contrary consequences. Though nations, in the main, are governed by what they suppose their interest, he must be imperfectly versed in human nature who thinks it indifferent whether the maxims of a State tend to excite kind or unkind dispositions in others, or who does not know that these dispositions may insensibly mould or bias the views of self-interest. This were to suppose that rulers only reason—do not feel; in other words, are not men.

Moreover, the measures of war ought ever to look forward to peace. The confiscation or sequestration of the private property of an enemy must always be a point of serious discussion, when interest or necessity leads to negotiations for peace. Unless when absolutely prostrate by the war, restitution is likely to constitute an ultimatum of the suffering party. It must be agreed to, or the war protracted, and at last, it is probable, it must still be agreed to. Should a

refusal of restitution prolong the war for only one year, the chance is that more will be lost than was gained by the confiscation. Should it be necessary finally to make it, after prolonging the war, the disadvantage will preponderate in a ratio to the prolongation. Should it be, in the first instance, assented to, what will have been gained? The temporary use of a fund of inconsiderable moment, in the general issue of the war, at the expense of justice, character, credit, and, perhaps, of having sharpened the evils of war. How infinitely preferable to have drawn an equal fund from our own resources, which, with good management, is always practicable! If the restitution includes damages, on account of the interference, for the failures of individuals, the loan will have been the most costly that could have been made. It has been elsewhere observed that our treaty of peace with Great Britain gives an example of restitution. The late one between France and Prussia gives another. This must become every day more and more a matter of course, because the immunity of mercantile debts becomes every day more and more important to trade, better understood to be so, and more clearly considered as enjoined by the principles of the law of nations.

Thus we see that, in reference to the simple question of war and peace, the measure of confiscation or sequestration is marked with every feature of impolicy.

We have before seen that the pretensions of a right to do the one or the other has a most inimical aspect toward commerce and credit.

Let us resume this view of the subject. The credit which our merchants have been able to obtain abroad, especially in Great Britain, has, from the first settlement of our country to this day, been the animating principle of our foreign commerce. This every merchant knows and feels; and every intelligent merchant is sensible that, for many years to come, the case must continue the same. This, in our situation, is a peculiar reason, of the utmost force, for renouncing the pretension in question.

The exercise of it, or the serious apprehension of its exercise, would necessarily have one of two effects. It would deprive our merchants of the credit, so important to them, or it would oblige them to pay a premium for it, proportioned to the opinion of the risk. Or, to speak more truly, it would combine the two effects; it would cramp credit, and subject what was given to a high premium. The most obvious and familiar principles of human action establish, that the consideration for money or property, lent or credited, is moderate or otherwise, according to the opinion of security or hazard, and that the quantity of either to be obtained, on loan or credit, is in a great degree contracted or enlarged by the same rule.

Thus should we, in the operations of our trade, pay exorbitantly for a pretension which is of little value, or rather, which is pernicious, even in the relations to which its utility is referred. What folly to cherish it! How much greater the folly ever to think of exercising it! It never can be exercised hereafter, in our country, without great and lasting mischief.

Instead of cherishing so odious a pretension, as "our best, our only weapon of defence," wisdom admonishes us to be eager to cast it from us, as a weapon most dangerous to the wearer, proscribed by the laws of nations, by the laws of honor, and by every principle of sound policy.

Every merchant ought to desire that the most perfect tranquillity on this point, in foreign countries, should facilitate to him, on the best and cheapest terms, the credit for which he has occasion. And every other citizen ought to desire, that he may be thus freed from a continual contribution, in the enhanced price of every imported commodity he consumes, towards defraying the premium which the want of that tranquillity is calculated to generate.

CAMILLUS.

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### NO. XXII

1795.

The analogy of the stipulation in the 10th article, with stipulations in our other treaties, and in the treaties between other nations, is the remaining topic of discussion. After this, attention will be paid to such observations, by way of objection to the article, as may not have been before expressly or virtually answered.

The 20th article of our treaty of amity and commerce with France is in these words:

"For the better promoting of commerce, on both sides, it is agreed, that if a war shall break out between the said two nations, six months, after the

proclamation of war, shall be allowed to the merchants in the cities and towns where they live, for selling and transporting their goods and merchandises; and if any thing be taken from them or any injury be done them within that term by either party, or the people or subjects of either, full satisfaction shall be made for the same."

The 18th article of our treaty of amity and commerce with the United Netherlands is in these words:

"For the better promoting of commerce, on both sides, it is agreed, that if a war should break out between their high Mightinesses, the States General of the United Netherlands, and the United States of America, there shall always be granted to the subjects on each side, the term of nine months, after the date of the rupture or the proclamation of war, to the end that they may retire with their effects and transport them where they please, which it shall be lawful for them to do, as well as to sell and transport their effects and goods, with all freedom and without any hindrance, and without being able to proceed, during the said term of nine months, to any arrest of their effects, much less of their persons; on the contrary, there shall be given them, for their vessels and effects which they would carry away, passports and safe conducts for the nearest ports of their respective countries, and for the time necessary for the voyage."

The 22d article of our treaty of amity and commerce with Sweden is in these words:

"In order to favor commerce on both sides as much as possible, it is agreed, that in case war should break out between the two nations, the term

of nine months after the declaration of war shall be allowed to the merchants and subjects respectively, on one side and on the other, in order that they may withdraw with their effects and movables, which they shall be at liberty to carry off or to sell where they please, without the least obstacle, nor shall any seize their effects, and much less their persons, during the said nine months; but, on the contrary, passports, which shall be valid for a time necessary for their return, shall be given them for their vessels and the effects which they shall be willing to carry with them, and if anything is taken from them or any injury is done to them by one of the parties, their people and subjects, during the term above prescribed, full and entire satisfaction shall be made to them on that account."

The 23d article of our treaty of amity and commerce with Prussia contains this provision:

"If war should arise between the two contracting parties, the merchants of either country, then residing in the other, shall be allowed to remain nine months, to collect their debts and settle their affairs, and may depart freely, carrying off all their effects without molestation or hindrance."

These articles of four, and the only commercial, treaties we had with foreign powers, prior to the pending treaty with Great Britain, though differing in terms, agree in substance, except as to time, which varies from six to nine months. And they clearly amount to this: that upon the breaking out of a war between the contracting parties in each case, there shall be, for a term of six or nine months, full protec-

tion and security to the persons and property of the subjects of one which are then in the territories of the other, with liberty to collect their debts,[1] to sell their goods and merchandises, and to remove, with their effects, wheresoever they please. For this term of six or nine months, there is a complete suspension of the pretended right to confiscate or sequester, giving, or being designed to give, an opportunity to withdraw the whole property which the subjects or citizens of one party have in the country of the other.

The differences between these stipulations and that in the article under examination are chiefly these: The latter is confined to debts, property in the public funds and in public and private banks, without any limitation of the duration of the protection. The former comprehends, in addition, goods and merchandises, with a limitation of the protection to a term of six or nine months; but with the intent and supposition that the term allowed may and will be adequate to entire security. The principle, therefore, of all the stipulations is the same; each aims at putting the persons and property of the subjects of one enemy, especially merchants, being within the country of the other enemy at the commencement of a war, out of the reach of confiscation or sequestration.

The persons whose names are to our other treaties, on the part of the United States, are Benjamin Franklin, Silas Deane, Arthur Lee, John Adams, and

[1] The term "debts" is only expressed in the Prussian treaty, but there are in the other treaties, terms which include debts, and this is the manifest spirit and intent of all.

Thomas Jefferson. The three first are to the treaty with France; Mr. Adams is singly to that with the United Netherlands; Dr. Franklin singly to that with Sweden; and these two, with Mr. Jefferson, are jointly to that with Prussia. The treaty with Sweden was concluded in April, 1783; that with Prussia, in August, 1785. These dates repel the idea, that considerations of policy, relative to the war, might have operated in the case.

We have, consequently, the sanction of all these characters to the principle which governed the stipulation entered into by Mr. Jay; and not only from the ratification of the former treaties at different periods, distant from each other, by different descriptions of men in our public councils, but also from there never having been heard in the community a lisp of murmur against the stipulation, through a period of seventeen years, counting from the date of the treaty with France, there is just ground to infer a coincidence of the public opinion of the country.

I verily believe, that if, in the year 1783, a treaty had been made with England, containing an article similar to the 10th in the present treaty, it would have met with general acquiescence. The spirit of party had not then predisposed men's minds to estimate the propriety of a measure according to the agent, rather than according to its real fitness and quality. What would then have been applauded as wise, liberal, equitable, and expedient, is now, in more instances than one, under the pestilential influence of that baneful spirit, condemned as improvident, impolitic, and dangerous.

Our treaty with Prussia, the 23d article of which has been cited, is indeed a model of liberality, which, for the principles it contains, does honor to the parties, and has been in this country a subject of deserved and unqualified admiration. It contradicts as if studiously, those principles of restriction and exclusion, which are the foundations of the mercantile and navigating system of Europe. It grants perfect freedom of conscience and worship to the respective subjects and citizens, with no other restraint than that they shall not insult the religion of others. Adopting the rule, that free ships shall make free goods, it extends the protection to the persons as well as to the goods of enemies. Enumerating, as contraband, only "arms, ammunition, and military stores," it even provides that contraband articles shall not be confiscated, but may be taken on the condition of paying for them. It provides against embargoes of vessels and effects. It expressly exempts women, children, scholars of every faculty, cultivators of the earth, artisans, manufacturers, and fishermen, unarmed and inhabiting unfortified towns, villages, and places, and, in general, all others whose occupations are for the common subsistence and benefit of mankind, their houses, fields, and goods, from molestation in their persons and employments, and from burning, wasting, and destruction, in time of war; and stipulates payment at a reasonable price for what may be necessarily taken from them for military use. It likewise protects from seizure and confiscation, in time of war, vessels employed in trade, and inhibits the granting commissions to

private armed vessels, empowering them to take or destroy such trading vessels, or to interrupt their commerce; and it makes a variety of excellent provisions to secure to prisoners of war a humane treatment.

These particulars are stated as evidence of the temper of the day, and of a policy, which then prevailed, to bottom our system with regard to foreign nations upon those grounds of moderation and equity, by which reason, religion, and philosophy had tempered the harsh maxims of more early times. It is painful to observe an effort to make the public opinion, in this respect, retrograde, and to infect our councils with a spirit contrary to these salutary advances toward improvement in true civilization and humanity.

If we pass from our own treaties to those between other nations, we find that the provisions which have been extracted from ours have very nearly become formulas in the conventions of Europe. As examples of this may be consulted the following articles of treaties between Great Britain and other powers (to wit), the XVIIIth article of a treaty of peace and commerce with Portugal, in 1642; the XXXVIth article of a treaty of peace, commerce, and alliance with Spain, in 1667; the XIXth article of a treaty of peace, and the IId of a treaty of commerce with France, both in 1713; and the XIIth article of a treaty of commerce and navigation with Russia, in 1766.

The article with Portugal provides, that if difficulties and doubts shall arise between the two nations,

which give reason to apprehend the interruption of commerce, public notice of it shall be given to the subjects on both sides, and after that notice, two years shall be allowed to carry away the merchandises and goods, and in the meantime there shall be no injury or prejudice done to any person or goods on either side.

The articles with France, in addition to the provisions common in other cases, particularly stipulate, that during the term of the protection (six months) "the subjects on each side shall enjoy good and speedy justice, so that during the said space of six months they may be able to recover their goods and effects, intrusted as well to the public as to private persons."

The article with Russia, besides stipulating an exemption from confiscation for one year, with the privilege to remove and carry away in safety, provides additionally, that the subjects of each party "shall be further permitted, either at or before their departure, to consign the effects which they shall not as yet have disposed of, as well as the debts that shall be due to them, to such persons as they shall think proper, in order to dispose of them according to their desire and for their benefit; which debts the debtors shall be obliged to pay in the same manner as if no such rupture had happened."

All these articles are, with those of our treaties, analogous in principle, as heretofore particularly explained, to the 10th article of the treaty under discussion. That of the British treaty with France designates expressly debts due from the *public* as well

as those due from private persons. That with Russia goes the full length of our 10th article; empowering the creditors on each side to assign the debts which they are not able to collect within the term of their residence, to whomsoever they think fit, for their own benefit, and declaring that these debts shall be paid to the assigns in the same manner as if no rupture had happened.

There is a document extant, which may fairly be supposed to express the sense of the Government of France, at the period to which it relates, of the foundation of these stipulations. It is a memorial of Mr. Bussy, minister from the court of France to that of London, for negotiating peace, dated in the year 1761, and contains these passages: "As it is impracticable for two princes who make war with *each other to agree between them which is the aggressor with regard to the other*,[1] equity and humanity have dictated these precautions, that where an unforeseen rupture happens suddenly and without any previous declaration, foreign vessels, which, navigating *under the security of peace* and of treaties, happen, at the time of rupture, to be in either of the respective ports, shall have time and full liberty to withdraw themselves.

"This wise provision, so agreeable to the rules of good faith, *constitutes a part of the law of nations*, and the article of the treaty which sanctifies these pre-

[1] Thus we find it the sentiment of this minister, that it is *impossible* for two princes who make war with each other, to agree *which is the aggressor with regard to the other*. And yet Mr. Jay was to extort from Great Britain an acknowledgment, that *she was the aggressor with regard to us*, and was guilty of pusillanimity in waiving the question.

cautions ought to be faithfully executed, notwithstanding the breach of the other articles of the treaty which is the natural consequence of the war.

"The courts of France and Great Britain used this salutary precaution in the treaties of Utrecht and Aix-la-Chapelle."

These passages place the security stipulated in the treaties for the persons and property of the subjects of one party found in the country of another, at the beginning of a war, upon the footing of *its constituting a part of the law of nations*, which may be considered as a formal diplomatic recognition of the principle for which we contend. As this position was not itself in dispute between the two governments, but merely a collateral inference from it, applicable to vessels *taken at sea*, prior to a declaration of war, it may be regarded as a respectable testimony of the law of nations on the principal point.

If the law of nations confers this exemption from seizure upon vessels which, at the time of the rupture, happen to be in the respective parts of the belligerent parties, it is evident that it must equally extend its protection to debts contracted in a course of lawful trade. Vessels are particularly mentioned, because the discussion turned upon vessels seized at sea. But the reference to the treaties of Utrecht and Aix-la-Chapelle shows, that the minister, in his observation, had in view the whole subject-matter of the articles of those treaties which provide for the security of merchants and their effects in the event of war.

This conformity in principle, of the article under examination, with the provisions in so many treaties of our own and of other nations, taken in connection with the comment of Mr. Bussy, brings a very powerful support to the article. It is additional and full evidence that our envoy, in agreeing to it, did not go upon new and untrodden ground; that, on the contrary, he was in a beaten track; that, in pursuing the dictates of reason, and the *better opinion* of writers, as to the rule of the law of nations respecting the point, he was, at the same time, pursuing the examples of all the other treaties which we had ourselves made, and of many of those of other countries.

It is now incumbent upon me to perform my promise of replying to such objections to the article as may remain unanswered by the preceding remarks. It is with pleasure I note that the field is very narrow—that, indeed, there scarcely remains any thing which is not so frivolous and impotent as almost to forbid a serious replication. It will therefore be my aim to be brief.

It is said, there is only an apparent reciprocity in the article, millions being due on our side, and little or nothing on the other.

The answer to this is, that no right being relinquished on either side, no privilege granted, the stipulation amounting only to a recognition of a rule of the law of nations, to a promise to abstain from injustice and a breach of faith, there is no room for an argument about reciprocity further than to require that the promise should be mutual, as is the case. This is the only equivalent which the nature of the

subject demands or permits. It would be dishonorable to accept a boon merely for an engagement to fulfil a moral obligation. Indeed, as heretofore intimated, the true rule of reciprocity in stipulations of treaties, is equal right, not equal advantage from each several stipulation.

But it has been shown, that the stipulation will be beneficial to us, by the confidence which it will give on the other side, obviating and avoiding the obstructions to trade, the injuries to and encumbrances upon credit, naturally incident to the distrust and apprehension which, after the question had been once moved, were to be expected. Here, if a compensation were required, there is one. Let me add as a truth—which, perhaps, has no exception, however uncongenial with the fashionable patriotic creed—that, in the wise order of Providence, nations, in a temporal sense, may safely trust the maxim, that the observance of justice carries with it its own and a full reward.

It is also said that, having bound ourselves by treaty, we shall hereafter lose the credit of moderation, which would attend a forbearance to exercise the right. But it having been demonstrated that no such right exists, we only renounce a claim to the negative merit of not committing injustice, and we acquire the positive praise of exhibiting a willingness to renounce explicitly a pretension which might be the instrument of oppression and fraud. It is always honorable to give proof of upright intention.

It is further said, that under the protection of this stipulation the king of Great Britain, who has

already *speculated in our funds* (the assertors would be puzzled to bring proof of the fact), may engross the whole capital of the Bank of the United States, and thereby secure the uncontrolled direction of it; that he may hold the stock in the name of the ambassador, or of some citizen of the United States, perhaps a Senator, who, if of the virtuous twenty,[1] might be proud of the honor; that thus our citizens, in time of peace, might experience the mortification of being beholden to British directors for the accommodations they might want; that, in time of war, our operations might be cramped at the pleasure of his Majesty, and according as he should see fit or not to accommodate our Government with loans; and that both in peace and war we may be reduced to the abject condition of having the whole capital of our national bank administered by his Britannic Majesty.

Shall I treat this rhapsody with seriousness or ridicule?

The capital of the Bank of the United States is ten millions of dollars, little short, at the present market price, of three millions of pounds sterling; but, from the natural operation of such a demand, in raising the price, it is not probable that much less than four millions sterling would suffice to complete the monopoly. I have never understood, that the private purse of his Britannic Majesty, if it be true, as asserted, that he has already witnessed a relish for speculation in our funds (a fact, however, from which it was natural to infer a more pacific disposition toward us), was so very ample as conveniently

[1] Those who advised to a ratification of the treaty.

to spare an item of such size for a speculation across the Atlantic. But, perhaps, the national purse will be brought to his aid. As this supposes a parliamentary grant, new taxes, and new loans, it does not seem to be a very manageable thing, without disclosure of the object; and, if disclosed, so very unexampled an attempt of a foreign government would present a case completely out of the reach of all ordinary rules, justifying, by the manifest danger to us, even war and the confiscation of all that had been purchased. For let it be remembered, that the article does not protect the public property of a foreign government, prince, or state, independent of the observation just made, that such a case would be without the reach of ordinary rules. It may be added, that an attempt of this kind, from the force of the pecuniary capital of Great Britain, would, as a precedent, threaten and alarm all nations. Would consequences like these be incurred?

But let it be supposed that the inclination shall exist, and that all difficulties about funds have been surmounted—still, to effect the plan, there must be, in all the stockholders, a willingness to sell to the British king or his agents, as well as the will and means, on his part, to purchase. Here, too, some impediments might be experienced; there are persons who might choose to keep their property in the shape of bank stock, and live upon the income of it, whom price would not readily tempt to part with it. Besides, there is an additional obstacle to complete success,—the United States are themselves the proprietors of two millions of the bank stock.

Of two things, one, either the monopoly of his Britannic Majesty would be known (and it would be a pretty arduous task to keep it a secret, especially if the stock was to stand, as suggested, in the name of his ambassador), or it would be unknown and concealed under unsuspected names. In the former supposition, the observations already made recur. There would be no protection to it from the article; and the extraordinary nature of the case would warrant any thing. Would his Majesty or the Parliament choose to trust so large a property in so perilous a situation?

If, to avoid this, the plan should be to keep the operation unknown, the most effectual method would be to place the stock in the names of our own citizens. This, it seems, would be attended with no difficulty, since even our Senators would be ambitious of the honor; and if they should have qualms and fears, others more compliant could, no doubt, be found amongst the numerous sectaries or adherents of Great Britain in our country; probably some of the patriots would not be inexorable, if properly solicited. Or, in the last resort, persons might be sent from Great Britain to acquire naturalization for the express purpose.

In this supposition, too, the article would be at the least innocent. For its provisions are entirely foreign to the case of stock standing in the names of our own citizens. It neither enlarges nor abridges the power of the Government in this respect.

Further, how will the article work the miracle of placing the bank under the management of British

directors? It gives no new rights, no new qualifications.

The constitution of the bank (section the 5th, 7th of the act of incorporation) has provided, with solicitude, these important guards against foreign or other sinister influence: 1. That none but a citizen of the United States shall be eligible as a director. 2. That none but a stockholder, actually resident within the United States, shall vote in the elections by proxy. 3. That one fourth of the directors, who are to be elected annually, must every year go out of the direction. 4. That a director may, at any time, be removed and replaced by the stockholders at a general meeting. 5. That a single share shall give one vote for directors, while any number of shares, in the same person, copartnership, or body politic, will not give more than thirty votes.

Hence it is impossible that the bank can be in the management of British directors—a British subject being incapable of being a director. It is also next to impossible that an undue British influence could operate in the choice of directors, out of the number of our own citizens. The British king, or British subjects out of the United States, could not even have a vote by attorney, in the choice. Schemes of secret monopoly could not be executed, because they would be betrayed, unless the secret was confined to a small number. A small number, no one of whom could have more than thirty votes, would be easily overruled by the more numerous proprietors of single or a small number of shares, with the addition of the votes of the United States.

But here again it is to be remembered that as to combination with our own citizens, in which they were to be ostensible for any pernicious foreign project, the article under consideration is perfectly nugatory. It can do neither good nor harm, since it merely relates, as to the exemption from confiscation and seizure on our part, to the known property of British subjects.

It follows, therefore, that the dangers portrayed to us from the speculative enterprises of his Britannic Majesty are the vagaries of an over-heated imagination, or the contrivances of a spirit of deception; and that so far as they could be supposed to have the least color, it turns upon circumstances upon which the treaty can have no influence whatever. In taking pains to expose their futility I have been principally led by the desire of making my fellow-citizens sensible, in this instance, as in others, of the extravagancies of the opposers of the treaty.

One artifice to render the article unacceptable has been to put cases of extreme misconduct, on the other side,—of flagrant violations of the law of nations, of war, of justice, and of humanity; and to ask, whether, under such circumstances, the confiscation or sequestration of debts would not be justifiable? To this the answer is, that if circumstances so extraordinary should arise, as, without the treaty, would warrant so extraordinary an act, they will equally warrant it under the treaty. For cases of this kind are exceptions to all general rules. They would excuse the violation of an express or positive, as well as of a tacit or virtual, pledge of the

public faith: which describes the whole difference between the existence and non-existence of the article in question. They resemble those cases of extreme necessity (through excessive hunger, for instance), which, in the eye of the law of nature, will excuse the taking of the property of another, or those cases of extreme abuse of authority of rulers, which, amounting unequivocally to tyranny, are admitted to justify forcible resistance to the established authorities. Constitutions of government, laws, treaties, all give way to extremities of such a description: the point of obligation is to distinguish them with sincerity, and not to indulge our passions and interests in substituting pretended for real losses.

A writer, who disgraces the name of CICERO by adopting it, makes a curious remark by way of objection. He affirms that the article is nugatory, because a treaty is dissolved by a state of war, in which state the provision is designed to operate. If this be true, the article is at least harmless, and the trouble of painting it in such terrific colors might have been spared. But it is not true. Reason, writers, the practice of all nations, accord in this position, that those stipulations which contemplate the state of war—in other words, which are designed to operate in case of war, preserve their force and obligation when war takes place.[1] To what end else all the stipulations which have been cited from so many treaties?[2]

[1] Vatel, B. III., ch. x.

[2] This writer is as profligate as he is absurd. Besides imputing to *Camillus*, in general terms, a number of things of which he never

Previous to a conclusion I shall observe, barely with a view to accuracy, that the article leaves unprotected all vessels, goods, and merchandises—every species of property, indeed, except debts between individuals and the property of individuals in the public funds and in public and private banks. With this exception, whatever before may have been liable to confiscation or sequestration still remains so, notwithstanding any thing contained in this article.

To overrate the value and force of our own arguments is a natural foible of self-love; to be convinced without convincing others, is no uncommon fate of a writer or speaker; but I am more than ordinarily mistaken if every mind open to conviction will not have been satisfied by what has been offered —that the 10th article of the treaty lately negotiated with Great Britain, does nothing but confirm, by a positive agreement, a rule of the law of nations, indicated by reason, supported by the better opinion of writers, ratified by modern usage, dictated by justice and good faith, recognized by formal acts and declarations of different nations, witnessed by diplomatic testimony, sanctioned by our treaties with other countries, and by treaties between other countries, and conformable with sound policy and the true interests of the United States.

dreamt, he has the effrontery to forge, as a *literal quotation* from him (calling it his *own language* and designating it by *inverted commas*), a passage respecting the impressing of seamen, which certainly not in terms, nor even in substance, upon fair construction, is to be found in any thing he has written. Not having all the numbers of *Cicero* at hand, I may mistake, in attributing to him the principal sentiment, which is from memory, but I have under my eye the number which witnesses his forgery.

The discussion has been drawn out to so great a length, because the objections to this article are amongst those which have been urged with the greatest warmth and emphasis against the treaty, and its vindication from them, if satisfactory, must go far toward securing to it the public suffrage. Citizens of America, it is for you to perform your part of the task; it is for you to weigh with candor the arguments which have been submitted to your judgments; to consult, without bias, the integrity of your hearts; to exile prejudice, and to immolate on the altar of truth the artifices of cabal and falsehood! There can then be no danger that patriotism will have to lament, or national honor to blush, at the sentence you shall pronounce.

The articles which adjust the matters of controversy between the two countries, all those which are permanent, have now been reviewed. Let me appeal to the consciences of those who have accompanied me in the review; if these articles were all that composed the treaty, would it be the better that they should exist—or that all the sources of rupture and war with Great Britain should have survived the negotiation to extinguish them, and should still actually subsist in full vigor? If every enlightened and honest man must prefer the former—then let me make another observation, and put another question. The remaining articles of the treaty, which constitute its commercial part, expire by their own limitation at the end of twelve years. It is in the power of either party, consistently with the instrument, to terminate them at the end of the expiration of *two*

years after the present war between France and Great Britain.

Is it at all probable that they can contain any thing so injurious, considering the short duration which may be given to them, as to counterbalance the important consideration of preserving peace to this young country; as to warrant the excessive clamors which have been raised; as to authorize the horrid calumnies which are vented; and to justify the systematic efforts which are in operation to convulse our country and to hazard even CIVIL WAR?[1]

CAMILLUS.

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## NO. XXIII[2]

1795.

The preceding articles having adjusted those controversies which threatened an open rupture between the two countries, it remained to form such dispositions relative to the intercourse, commerce, and navigation of the parties as should appear most likely to preserve peace, and promote their mutual advantage.

Those who have considered with attention the interests of commerce will agree in the opinion, that its utility, as well as general prosperity, would be

[1] In applying the character of dishonesty and turpitude to the principle of confiscation or sequestration, I am far from intending to brand as dishonest men all those whose opinions favor it. I know there are some ardent spirits chargeable with the error, of whose integrity I think well.

[2] This and the seven succeeding numbers are from the pen of Rufus King, excepting the parts within brackets, which are in Hamilton's hand.—ED.

most effectually advanced by a total abolition of the restraints and regulations with which the jealousies and rival policy of nations have embarrassed it. But though we are not chargeable with having contributed to the establishment of these errors, so discouraging to the industry and perplexing in the intercourse of nations, we found them so deeply rooted and so extensively prevalent, that our voice and opinions would have been little regarded, had we expressed a desire of a system more liberal and advantageous to all.

The rights of commerce among nations between whom exist no treaties, are imperfect.

"The law of nature," says Vatel (B. I., s. 89), "gives to no person whatever the least kind of right to sell what belongs to him to another who does not want to buy it; nor has any nation that of selling its commodities or merchandise to a people who are unwilling to have them; every man and every nation being perfectly at liberty to buy a thing that is to be sold, or not to buy it, and to buy it of one rather than of another. Every State has constantly," continues the same author, "a right to prohibit the entrance of foreign merchandise, and the people who are interested in this prohibition have no right to complain of it." States by convention may turn these imperfect into perfect rights, and thus a nation, not having naturally a perfect right to carry on commerce with another, may acquire it by treaty. A simple permission to trade with a nation gives no perfect right to that trade; it may be carried on so long as permitted, but the nation granting such

permission is under no obligation to continue it. A perfect right in one nation to carry on commerce and trade with another nation can alone be procured by treaty.

From the precarious nature of trade between nations, as well as from the desire of obtaining special advantages and preferences in carrying it on, originated the earliest conventions on the subject of commerce. The first commercial treaty that placed the parties on a more secure and better footing in their dealings with each other than existed in their respective intercourse with other nations, inspired others with a desire to establish, by similar treaties, an equally advantageous arrangement. Thus one treaty was followed by another, until, as was the case when the United States became an independent power, all nations had entered into extensive and complicated stipulations, concerning their navigation, manufactures, and commerce.

This being the actual condition of the commercial world when we arrived at our station in it, the like inducements to render certain that which by the law of nations was precarious, and to participate in the advantages secured by national agreements, prompted our Government to propose to all, and to conclude with several, of the European nations, treaties of commerce.

Immediately after the conclusion of the war, Congress appointed Mr. Adams, Doctor Franklin, and Mr. Jefferson, joint commissioners, to propose and conclude commercial treaties with the different nations of Europe. This commission was opened at

Paris, and overtures were made to the different powers (including Great Britain) through their ministers residing at Paris. The basis of these numerous treaties, which Congress were desirous to form, was, that the parties should respectively enjoy the rights of the most favored nations. Various answers were given by the foreign ministers, in behalf of their several nations. But the treaty with Prussia was the only one concluded, of the very great number proposed by the American commissioners. Mr. Adams, in 1785, was removed to London, Dr. Franklin soon after returned to America, and Mr. Jefferson succeeded him as minister at Paris. Thus failed the project of forming commercial treaties with almost every power in Europe. Treaties with Russia, Denmark, Great Britain, Spain, and Portugal would have been of importance; but the scheme of extending treaties of commerce to all the minor powers of Europe, not omitting his Holiness the Pope, was, it must be acknowledged, somewhat chimerical, and could not fail to have cast an air of ridicule on the commissions that with great solemnity were opened at Paris.

The imbecility of our National Government, under the articles of confederation, was understood abroad as well as at home; and the opinions of characters in England, most inclined to favor an extensive commercial connection between the two countries, were understood to have been opposed to the formation of a commercial treaty with us, since, from the defects of our articles of union, we were supposed to be destitute of the power requisite to enforce the

execution of the stipulations that such a treaty might contain.

We must all remember the various and ill-digested laws for the regulation of commerce, which were adopted by the several States as substitutes for those commercial treaties, in the conclusion of which our commissioners had been disappointed; the embarrassments which proceeded from this source, joined to those felt from the derangement of the national treasury, were the immediate cause which assembled the convention at Philadelphia in 1787. The result of this convention was the adoption of the present Federal Constitution, the legislative and executive departments of which each possess a power to regulate foreign commerce: the former by enacting laws for that purpose; the latter, by forming commercial treaties with foreign nations.

The opinion heretofore entertained by our Government, respecting the utility of commercial treaties, is not equivocal; and it is probable that they will, in future, deem it expedient to adjust their foreign trade by treaty, in preference to legislative provisions, as far as it shall be found practicable, on terms of reasonable advantage. In the formation of the regulations that are legislative, being *ex parte*, the interest of those who establish them is seen in its strongest light, while that of the other side is rarely allowed its just weight. Pride and passion too frequently add their influence to carry these regulations beyond the limits of moderation; restraints and exclusions on one side beget restraints and exclusions on the other; and these retaliatory laws lead to, and

often terminate in, open war: while, on the other hand, by adjusting the commercial intercourse of nations by treaty, the pretensions of the parties are candidly examined, and the result of the discussion, it is fair to presume, as well from the experience of individuals in private affairs, as from that of nations in their more important and complicated relations, establishes those regulations which are best suited to the interests of the parties, and which alone afford that stability and confidence so essential to the success of commercial enterprise.

That our present government have thought a commercial treaty with Great Britain would be advantageous, is evident, not alone from the special and distinct commission given to Mr. Jay to form one, but likewise from the letter of Mr. Jefferson to Mr. Hammond, of the 29th of November, 1791, which was the first letter to that minister after his arrival, in which the Executive says: "With respect to the commerce of the two countries, we have supposed that we saw, in several instances, regulations on the part of your Government which, if reciprocally adopted, would materially injure the interests of *both nations;* on this subject, too, I must beg the favor of you to say, whether you are authorized to conclude or to negotiate arrangements with us which may fix the commerce between the two countries on principles of reciprocal advantage."

Further, from the first session of Congress, to that during which Mr. Jay's appointment took place, efforts were made to discriminate, in our revenue and commercial laws, between those nations with

whom we had, and those with whom we had not, commercial treaties—the avowed object of which discrimination was, to place the latter nations on a less advantageous commercial footing than the former, in order to induce them likewise to form commercial treaties with us; and it cannot be forgotten by those who affect to suppose that it was not expected that a treaty of commerce would be formed by Mr. Jay, that *Mr. Madison's* commercial resolutions which were under consideration at the time of Mr. Jay's appointment, grew out of, and were built upon, a clause of Mr. Jefferson's report of the 26th December, 1793, which asserts that Great Britain discovered no disposition to enter into a commercial treaty with us. The report alluded to is explicit in declaring a preference of friendly arrangements, by treaties of commerce, to regulations by the acts of our Legislature, and authorizes the inference, under which the commercial resolutions were brought forward, that the latter should be resorted to only when the former cannot be effected.

The power of the Executive to form commercial treaties, and the objection against the commercial articles before us, as an unconstitutional interference with the legislative powers of Congress, will, in the sequel, be distinctly examined, together with other objections on the point of constitutionality.

Against the policy of regulating commerce by treaty, rather than by acts of the Legislature, it is said that the legislative acts can, but that a treaty cannot, be repealed. This remark is true, and of weight against the formation of commercial treaties

which are to be of long duration, or like our commercial treaty with France, which is permanent. For, as we are yearly advancing in agriculture, manufactories, commerce, navigation, and strength, our treaties of commerce, especially such as, by particular stipulations, shall give to the parties other rights than those of the most favored nation, ought to be of short duration, that, like temporary laws, they may, at an early day, expire by their own limitation, leaving the interests of the parties to a new adjustment, founded on equity and mutual convenience.

Of this description are the commercial articles of the treaty with Great Britain; for none of them can continue in force more than twelve years; and they may all expire, if either party shall choose it, at the end of two years after the peace between France and Great Britain.

Did the limits assigned to this defence admit a review of the commercial and maritime codes of the principal European nations, we should discover one prevailing feature to characterize them all: we should see the general or common interest of nations, everywhere, placed in a subordinate rank, and their separate advantage adopted, as the end to be attained by their respective laws. Hence, one nation has enacted laws to protect their manufactures, another to encourage and extend their navigation, a third to monopolize some important branch of trade, and all have contributed to the creation of that complicated system of regulations and restraints which we see established throughout the commercial world.

One branch, and a principal one of this system, that which establishes the connection between the several European nations and their colonies, merits our particular attention. An exact knowledge of this connection would assist us in forming a just estimate of the difficulties that stand in opposition to our claim of free and full participation in the colony trade of Great Britain.

Unlike the plan of colonization adopted by the ancient governments, who, from the crowded population of their cities, sent forth and established beneath their auspices new and independent republics, the colonies of modern times have been planted with entirely different views; retained in a state of dependence on the parent country, their connection has been made subservient to that spirit of monopoly which has shown itself among all the commercial powers. Every European nation has its colonies, and for that reason prohibited all foreigners from trading to them.

Important political events arise and pass in such quick succession, that we are liable to forget facts and opinions familiar to us in periods within the ordinary powers of recollection. No subject was more critically examined, or generally understood before the American Revolution, than that which respected the connection between Great Britain and her colonies; all were then agreed, that the colony trade and navigation were subject to the restraints and regulations of the parent state. It was not against this dependence and commercial monopoly that the colonies complained! They were willing to submit to them.

It was the unjust attempt to tax them, to raise a revenue from them, without their consent, which combined that firm and spirited opposition which effected a division of the empire. Thus the Congress of 1775, in their last address to the inhabitants of Great Britain, say: "We cheerfully consent to such acts of the British Parliament as shall be restrained to the regulations of our external commerce, *for the purpose of securing the commercial advantages of the whole empire to the mother country*, and the commercial benefit of its respective members; excluding every idea of taxation, internal or external, for the purpose of raising a revenue on the subjects in America without their consent." The "colonial codes" of other nations are marked with the same spirit of monopoly. Thus Portugal shuts out all foreigners from the Brazils as well as from her Asiatic possessions; Spain, from South America and her West India islands; France excludes all foreigners from her Asiatic dominions, and limits within narrow bounds their intercourse with her colonies in the West Indies. Holland guards, with the miser's vigilance, the access to her Spice islands, and imitates, though with somewhat less rigor, the policy of the other powers in her West India possessions. And England, by her act of navigation, which has been in operation for more than a century, asserted, and hitherto has uniformly adhered to, the like system of exclusion and monopoly.

Notwithstanding the intimate alliance, the family compact, between France and Spain, the former has not been able to procure admission into the Spanish colonial territories, where she might have acquired

immense wealth by the sale of her manufactures, her wines, and her brandies. Holland, though a part of the Spanish monarchy long after the discovery of America and the establishment of the Spanish power in that quarter of the world, was unable, after her separation from Spain, and the acknowledgment of her independence, even in the zenith of her splendid power upon the ocean, to obtain by force or treaty a share in the Spanish colony trade to South America. The rival wars between the English and the Dutch toward the close of the last century, which originated in commercial competition and jealousy, were successively terminated without England yielding the smallest departure from the exclusive commercial system contained in her act of navigation.

Great Britain, though maintaining her exclusive laws against other nations at different periods, has shown the strongest desire to share in the rich trade of Spain with her colonies. The war that commenced in 1739 was occasioned by the firm, but irregular, opposition of Spain to the contraband efforts of British traders.

The impediments Great Britain has uniformly met in her attempts to extend her settlement in the Bay of Honduras, to form establishments at Falkland's Island, and more recently at Nootka Sound, afford additional proofs of the fixed policy of Spain on the subject of her colony trade.

Portugal, whose political safety more than once has appeared to depend upon the efficacious aid of Great Britain, does not yield to her ally any portion of her valuable colonial commerce.

So uniform and persevering has been the practice of nations on this point, that in the latest treaties of commerce between France and Spain, between each of these powers and Great Britain, between Great Britain, Sweden, Denmark, Holland, and Portugal, we do not discover that any one of these powers has consented to admit the others to a participation in the trade and navigation to their respective colonies —the Assiento contract for the supply of negroes to the Spanish colonies, which has been made by Spain with several powers, is an unimportant and solitary exception to this rule.

Montesquieu calls this law appropriating the colony commerce to the benefit of the parent state, "A fundamental law of Europe." "It has been established," says this enlightened Frenchman, "that the metropolis or mother country alone shall trade in the colonies, and that for very good reasons; because the design of the settlement was the extension of commerce, not the foundation of a city or new empire. Thus it is still a fundamental law of Europe, that all commerce with a foreign colony shall be regarded as a mere monopoly, punishable by the laws of the country; and in this case we are not to be directed by the laws and precedents of the ancients, which are not at all applicable."

"It is likewise acknowledged, that a commerce established between the mother countries does not include a permission to trade in the colonies; for these always continue in a state of prohibition." [Montesquieu, Liv. XXI., Chap. XVII.]

This subject is of too great importance not to be

pursued a little further. Principles connected with it, and such as will continue to operate whether we sanction or condemn them, remain to be disclosed. It is true that the principal end of the dominion that the European powers have held over their colonies, has been the monopoly of their commerce, "since in their exclusive trade (as has been observed by a sensible writer on the subject) consist the principal advantages of colonies, which afford neither revenue nor force for the defence of the parent country"; but this is not the sole object. Some nations, and among them Great Britain, have viewed the exclusive navigation and trade to their colonies, in the light in which they have seen their coasting trade and fisheries,—as a nursery for that body of seamen whom they have considered not only as necessary to the prosperity and protection of commerce, but as essential to the defence and safety of the state.

The situation of Great Britain in this respect is peculiar. When compared with several of the neighboring powers, her numbers and military forces are manifestly inferior. The armies kept on foot in peace, as well as those brought into the field in war, by the great nations in Europe, are so decidedly superior to those of Great Britain, that were she a continental power, her rivals would easily be an overmatch for her. The ocean is her fortification, and her seamen alone are the soldiers who can defend it. When Great Britain shall become an inferior maritime power, when her enemy shall acquire a decisive superiority on the sea, what will prevent a repetition of those conquests the examples of which we find in

her early history? No subject has been more profoundly thought on than this has been in Great Britain. Her policy, from the date of her navigation act, has been guided by these considerations; that her national safety depends on her wooden walls, is a maxim as sacred in Britain, as it once was in Athens. Her statesmen, her merchants, her manufacturers, and her yeomanry comprehend and believe it.

Is it then surprising, that we see her so anxious to encourage and extend her navigation, as to exclude, as far as practicable, foreigners from any share of her fisheries, her coasting, and her colony trade? Does not candor require us to admit, since her national defence rests upon her navy, which again depends on her seamen, which an extensive navigation can alone supply, that Great Britain, having more to risk, is among the last powers likely to break in upon or materially to relinquish that system of exclusive colony trade, that has so long and uniformly prevailed among the great colonizing powers?

America has her opinions, perhaps prejudices, on the subject of commerce: she is, and, at least until she shall become a naval power, will continue to be, without colonies. But her laws manifest a similar spirit with those of other nations, in the regulations which they prescribe for the government of her fisheries and her coasting trade. The object of these laws is an exclusion of foreign competition, in order to encourage and increase her own navigation and seamen; from which resources, not only in wars between other nations, but likewise in those in which she may be engaged, important commercial and

national advantages may be expected. These opinions deserve attention; they have already had and will continue to have a suitable influence with her Government. But we should remember, that other nations have likewise their opinions and prejudices on these subjects; opinions and prejudices not the less strong or deeply rooted for having been transmitted to them through a series of past generations. Thus in England, not only the public opinion, but what is more unconquerable, the *private interests* of many individuals will oppose every change in the existing laws that may be supposed likely to diminish their navigation, to limit their trade, or in any measure to affect disadvantageously their established system of national commerce.

It cannot have escaped notice, that we have among us characters who are unwilling to see stated the impediments that stand in the way of the commercial arrangements which, they contend, should be conceded to us by foreign nations, and who are ready to charge those who faithfully expose them, with an inclination to excuse or vindicate the unreasonable denials of our commercial rivals, and with a desire to yield up the just pretensions of our country. The article seems too gross to be dangerous with a sensible people, but the public should notwithstanding be on their guard against it. They should dispassionately examine the real difficulties to be encountered in the formation of our commercial treaties. They should inquire and ascertain how far other nations, seeking the same advantages, have been able to succeed. They should further compare the treaty in

question with those we have made before with other nations. The result of such investigation, so far from warranting the condemnation of the commercial articles of the treaty before us, it is believed, would demonstrate that these articles make a wider breach in the British commercial system than has ever before been made; that on their commercial dispositions they are preferable to any treaty we have before concluded; and that there is rational ground to believe that the treaty will have a tendency friendly to the agriculture, the commerce, and the navigation of our country.

CAMILLUS.

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